

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

ORIGINAL

76-7123

United States Court of Appeals

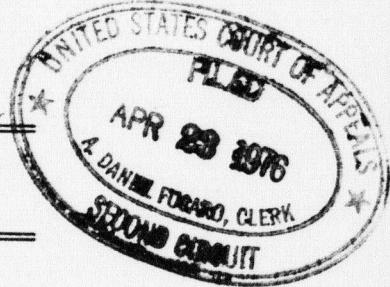
For the Second Circuit.

GIUSEPPE CAPATORTO,
Plaintiff-Appellant,
against

COMPANIA SUD AMERICANA DE VAPORES,
CHILEAN LINE, INC.,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.



SERGI & FETELL
Counsel to
JOSEPH MADDALENA
Attorneys for Plaintiff-Appellant
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RE 2-5520

PAGINATION AS IN ORIGINAL COPY

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TESTIMONY.

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	Admitted page	Printed page
2. Release dated December 24, 1974	26a	116a
3. Check dated 1/22/73	38a	117a

DEFENDANT'S EXHIBIT:

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Stipulation Amending Complaint.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

GIUSEPPE CAPOTORTO,

Plaintiff,

against

COMPANIA SUD AMERICANA DE VAPORES, CHILEAN LINE Inc.,

Defendant.

75 Civ. 750

It is hereby stipulated by and between counsel for the parties that the complaint be and is hereby amended as follows:

- 1) The caption of this matter as here and before indicated is hereby amended as follows:

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

GIUSEPPE CAPOTORTO,

Plaintiff,

against

COMPANIA SUD AMERICANA DE VAPORES,

Defendant.

Complaint

2) It is also stipulated and agreed by and between counsel for the respective parties that paragraph designated "First" in plaintiff's complaint be amended to read as follows:

FIRST: That in all the times hereinafter mentioned that the Plaintiff Giuseppe Capotorto was and still is a citizen of the United States and a resident of the City and State of New York, County of Kings.

JOSEPH MADDALENA
Attorney for Plaintiff

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant

Complaint.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

The plaintiff, complaining of the defendant herein, by his attorney, Joseph Maddalena, Esq., alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: That at all the times hereinafter mentioned the plaintiff in this action was and still is a resident of the County of Kings, City and State of New York.

SECOND: That on or about the 6th day of October, 1972, the plaintiff was employed as a longshoreman aboard the Steamship Imperial which was afloat at the State Pier, Brooklyn, New York.

THIRD: That the defendant in this action is a foreign corporation.

Complaint

FOURTH: That the said Steamship Imperial was owned, managed and controlled by the defendant herein.

FIFTH: This is an action for a declaratory judgment pursuant to 28 USC Section 2201, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears.

SIXTH: That this action for declaratory judgment is brought by the plaintiff to set aside a purported Individual General Release which was executed by the plaintiff herein on the 24th day of December, 1974 (said release is annexed hereto and made a part hereof as if more fully set forth herein).

SEVENTH: That on the 6th day of October, 1972, the plaintiff was caused to be injured during the course of his duties as a longshoreman.

EIGHTH: That thereafter the plaintiff retained Martin Lassoff, Esq., 160 Broadway, New York, New York, to represent him with regard to his claim against the defendant herein.

NINTH: That on the 24th day of December, 1974, attorney Martin Lassoff, Esq., presented the within release to the plaintiff for execution.

TENTH: That plaintiff was advised by attorney, Martin Lassoff, Esq., as hereinbefore indicated, that were he to sign such a release and were there to be further hospitalization or incapacity as a result of the injuries sustained on October 6, 1972, that a subsequent claim could be made by the plaintiff and that the plaintiff could be thereafter indemnified for such subsequent claim.

ELEVENTH: That the plaintiff was under the impression when he executed the release on the 24th day of December, 1974, that the release was given in contemplation of disposing of his claim for disability and lost wages up until December 24, 1974.

Complaint

TWELFTH: That even as plaintiff executed the release hereinbefore referred to, the plaintiff was in severe pain and was under a physical disability.

THIRTEENTH: That thereafter on January 14, 1975, the plaintiff entered the Hospital of the Holy Family where he remained for twenty-four (24) days wherein a diagnosis of "Herniated Lumbar Disc" was made.

FOURTEENTH: That after the plaintiff herein was discharged from the Hospital of the Holy Family, was he advised for the first time, that the release hereinbefore referred to would serve to preclude further claims which arose as a result of the incident of October 6, 1972.

FIFTEENTH: That upon learning of this for the first time, the plaintiff discharged attorney, Martin Lassoff, Esq., inasmuch as it was never the intention of the plaintiff to dispose of his claim as indicated in the within release.

SIXTEENTH: That plaintiff has neither received nor accepted any money pursuant to said release.

SEVENTEENTH: That plaintiff has neither received nor accepted any monies pursuant to the settlement of his claim arising out of the incident of October 6, 1972 as hereinbefore stated.

EIGHTEENTH: That at this time the plaintiff is still totally incapacitated, unable to work and in severe pain.

AS AND FOR A SECOND CAUSE OF ACTION

NINETEENTH: Plaintiff repeats and realleges each and every allegation set forth in paragraphs numbered First through Eighteenth, with the same force and effect as if more fully set forth herein at length.

TWENTIETH: That plaintiff is a native of Italy.

Complaint

TWENTY-FIRST: That plaintiff neither reads nor writes English.

TWENTY-SECOND: That plaintiff's understanding of spoken English is faulty, defective and unclear.

TWENTY-THIRD: That on the 24th day of December, 1974, when plaintiff executed the within release in the presence of attorney, Martin Lassoff, Esq., there was no one present who spoke Italian or explained that the release as executed at that time would serve to preclude the plaintiff from making any further claim with respect to injuries sustained as hereinbefore indicated.

AS AND FOR A THIRD CAUSE OF ACTION

TWENTY-FOURTH: Plaintiff repeats and realleges each and every allegation set forth in paragraphs numbered First through Twenty-Third, with the same force and effect as if more fully set forth herein at length.

TWENTY-FIFTH: That at all the times hereinbefore stated the plaintiff was under the care of Frank P. Vaccarino, M. D.

TWENTY-SIXTH: That Dr. Vaccarino was not only the physician and medical specialist in behalf of the plaintiff, but was also a physician in behalf of the Gulf Insurance Company, the workman's compensation carrier, on this matter.

TWENTY-SEVENTH: That on November 14, 1972, Dr. Vaccarino made a diagnosis of "Lumbar Sacral Sprain" causally related to accident of October 6, 1972.

TWENTY-EIGHTH: That until plaintiff entered the Hospital of the Holy Family on January 14, 1975, Dr. Vaccarino continued to be under the impression that plaintiff had sustained a "Lumbar Sacral Sprain".

Complaint

TWENTY-NINTH: That during this interval plaintiff continued to see Dr. Vaccarino for examination and treatment.

THIRTIETH: That during this interval Dr. Vaccarino continued to advise the plaintiff that he had sustained a "Lumbar Sacral Sprain".

THIRTY-FIRST: That plaintiff relied, depended upon and accepted Dr. Vaccarino's diagnosis of "Lumbar Sacral Sprain" and executed the within release in contemplation of Dr. Vaccarino's then existing diagnosis.

THIRTY-SECOND: That Dr. Vaccarino again examined the plaintiff on February 24, 1975, which was after plaintiff was discharged from the Hospital of the Holy Family.

THIRTY-THIRD: That at that time, for the first time, did Dr. Vaccarino indicate that plaintiff had sustained "discogenic pathology" which was referable to the accident of October 6, 1972.

THIRTY-FOURTH: That had plaintiff been advised by Dr. Vaccarino or any other competent physician that he was suffering from a "Herniated Lumbar Disc" as plaintiff was advised by the Hospital of the Holy Family on his discharge therefrom or "Discogenic Pathology" as plaintiff was advised by Dr. Vaccarino for the first time on February 24, 1975, the plaintiff would not have executed the within release.

AS AND FOR A FOURTH CAUSE OF ACTION

THIRTY-FIFTH: Plaintiff repeats and realleges each and every allegation set forth in paragraphs numbered First through Thirty-Fourth, with the same force and effect as if more fully set forth herein at length.

Complaint

THIRTY-SIXTH: That the within release is in the amount of Sixteen Thousand One Hundred Eighty-Two and 57/100 (\$16,182.57) inclusive of the compensation lien of \$3,682.57 or a net settlement of \$12,000.

THIRTY-SEVENTH: That the plaintiff is completely incapacitated and unable to work.

THIRTY-EIGHTH: That the plaintiff remains in continuous pain as a result of the incident of October 6, 1972, as hereinbefore referred to.

THIRTY-NINTH: That in view of the foregoing the settlement, as hereinbefore indicated, is unconscionable and inequitable and clearly not commensurate with the plaintiff's injuries.

WHEREFORE, the plaintiff demands judgment against the defendant setting aside and declaring a nullity the general release which is annexed hereto.

JOSEPH MADDALENA, Esq.
Attorney for Plaintiff
Office & P. O. Address
289 Henry Street
Brooklyn, New York 11201
(212) 791 7447
By: JOSEPH MADDALENA

Answer.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

Defendant Compania Sud Americana De Vapores, sued herein as Compania Sud Americana De Vapores, Chilean Line Inc., answering the complaint by its attorneys, Kirlin, Campbell & Keating, alleges upon information and belief as follows:

AS TO THE FIRST CAUSE OF ACTION

FIRST: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered First of the complaint.

SECOND: It admits the allegations contained in paragraph numbered Second of the complaint.

THIRD: It admits the allegations contained in paragraph numbered Third of the complaint.

FOURTH: It admits that it owned the SS Imperial and that it managed and controlled those parts of the vessel which were not managed and controlled by independent contractors and their agents, servants and employees. It denies each and every other allegation contained in paragraph numbered Fourth of the complaint.

FIFTH: It admits that this is an action in which plaintiff seeks a declaratory judgment that he is not bound by a general release he duly executed on December 24, 1974. It denies each and every other allegation contained in paragraph numbered Fifth of the complaint.

SIXTH: It admits that plaintiff seeks to set aside a valid general release executed by him on December 24, 1974 in this action for a declaratory judgment. It denies each and every other allegation contained in paragraph numbered Sixth of the complaint.

Answer

SEVENTH: It admits that plaintiff claimed he was injured during the course of his duties as a longshoreman on October 6, 1972. It denies each and every other allegation contained in paragraph numbered Seventh of the complaint.

EIGHTH: It admits the allegations contained in paragraph numbered Eighth of the complaint.

NINTH: It admits the allegations contained in paragraph numbered Ninth of the complaint.

TENTH: It denies each and every allegation contained in paragraph numbered Tenth of the complaint.

ELEVENTH: It denies each and every allegation contained in paragraph numbered Eleventh of the complaint.

TWELFTH: It denies each and every allegation contained in paragraph numbered Twelfth of the complaint.

THIRTEENTH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Thirteenth of the complaint.

FOURTEENTH: It denies each and every allegation contained in paragraph numbered Fourteenth of the complaint.

FIFTEENTH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to the circumstances under which plaintiff discharged Attorney Martin Lassoff. It denies each and every other allegation contained in paragraph numbered Fifteenth of the complaint.

SIXTEENTH: It admits that plaintiff has not accepted any money pursuant to said release. The defendant is prepared to pay to the plaintiff immediately the sum of \$12,500.00 specified in the release if plaintiff is willing to accept this in settlement.

Answer

SEVENTEENTH: It admits the plaintiff has not accepted the settlement sum specified in the release. Defendant is prepared to pay this sum immediately in settlement of this case.

EIGHTEENTH: It denies each and every allegation contained in paragraph numbered Eighteenth of the complaint.

AS TO THE SECOND CAUSE OF ACTION

NINETEENTH: Defendant repeats and reiterates each and every answer and denial contained in paragraphs numbered First through Eighteenth of its answer to the complaint with the same force and effect as though fully set forth at length herein and, in addition thereto, alleges as follows:

TWENTIETH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twentieth of the complaint.

TWENTY-FIRST: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twenty-First of the complaint.

TWENTY-SECOND: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twenty-Second of the complaint.

TWENTY-THIRD: It denies each and every allegation contained in paragraph numbered Twenty-Third of the complaint.

AS TO THE THIRD CAUSE OF ACTION

TWENTY-FOURTH: Defendant repeats and reiterates each and every answer and denial contained in paragraphs numbered First through Twenty-Third, inclusive,

Answer

of its answer to the complaint with the same force and effect as though fully set forth at length herein and, in addition thereto, alleges as follows:

TWENTY-FIFTH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twenty-Fifth of the complaint.

TWENTY-SIXTH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twenty-Sixth of the complaint.

TWENTY-SEVENTH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twenty-Seventh of the complaint.

TWENTY-EIGHTH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twenty-Eighth of the complaint.

TWENTY-NINTH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Twenty-Ninth of the complaint.

THIRTIETH: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Thirtieth of the complaint.

THIRTY-FIRST: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Thirty-First of the complaint.

THIRTY-SECOND: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Thirty-Second of the complaint.

Answer

THIRTY-THIRD: It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered Thirty-Third of the complaint.

THIRTY-FOURTH: It denies each and every allegation contained in paragraph numbered Thirty-Fourth of the complaint.

AS TO THE FOURTH CAUSE OF ACTION

THIRTY-FIFTH: Defendant repeats and reiterates each and every answer and denial contained in paragraphs numbered First through Thirty-Fourth, inclusive, of its answer to the complaint with the same force and effect as though fully set forth at length herein and, in addition thereto, alleges as follows:

THIRTY-SIXTH: It admits that the consideration set forth in the general release duly executed by the plaintiff is the sum of \$16,182.57, inclusive of a compensation lien of \$3,682.57. It denies that this is a net settlement of \$12,000.00. It is a net settlement of \$12,500.00.

THIRTY-SEVENTH: It denies each and every allegation contained in paragraph numbered Thirty-Seventh of the complaint.

THIRTY-EIGHTH: It denies each and every allegation contained in paragraph numbered Thirty-Eighth of the complaint.

THIRTY-NINTH: It denies each and every allegation contained in paragraph numbered Thirty-Ninth of the complaint.

AS A FIRST SEPARATE AND COMPLETE DEFENSE

FORTIETH: In the complaint, plaintiff alleges that he is a resident of the County of Kings, City and State

Answer

of New York. He does not allege that he is a citizen of New York. If he is not a citizen of one of the states of the United States, this Court has no jurisdiction because the defendant is a foreign corporation and the controversy is not between citizens of different states; and it appears on the face of the complaint the alleged claim does not arise under the Constitution, laws or treaties of the United States and does not involve a federal question.

AS A SECOND SEPARATE AND COMPLETE DEFENSE

FORTY-FIRST: The complaint does not state a claim for which relief may be granted.

WHEREFORE, the defendant demands judgment against the plaintiff sustaining the general release duly executed by the plaintiff on December 24, 1974, with costs to the defendant as against the plaintiff and that the Court grant to the defendant such other, further and different relief, as the justice of the cause may require.

Jul 18 1975

KIRLIN, CAMPBELL & KEATING
By: THOMAS COYNE
A Member of the Firm
Attorneys for Defendant
Office & P. O. Address
120 Broadway
New York, N. Y. 10005

To:

Joseph Maddalena, Esq.
Attorney for Plaintiff
Office & P. O. Address
289 Henry Street
Brooklyn, N. Y. 11201

14a

Judgment.

UNITED STATES DISTRICT COURT

FOR THE
EASTERN DISTRICT OF NEW YORK.

This action came on for trial before the Court, Honorable John R. Bartels, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered, in favor of the defendant Compania Sud Americana and against the pltff Giuseppe Capotorto

It is Ordered and Adjudged that the Complaint be dismissed.

Dated at Brooklyn, New York, this 2nd day of March, 1976.

LEWIS ORGEL
Clerk of Court
By: (Illegible.)
Deputy Clerk

Notice of Appeal.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

SIRS:

Please Take Notice that plaintiff does hereby appeal to the United States Court of Appeals for the Second Circuit from a judgment entered in the Office of the Clerk of this Court on the 2nd day of March, 1976, dismissing the Complaint, and does hereby appeal from each and every part thereof, as well as the whole thereof on questions of law and fact.

Dated: Brooklyn, New York
March 8, 1976

Yours, Etc.,

JOSEPH MADDALENA, Esq.
Attorney for Plaintiff-Appellant
Office & P. O. Address
289 Henry Street
Brooklyn, New York 11201

To:

Kirlin, Campbell & Keating, Esqs.
Attorneys for Defendant-Appellee
120 Broadway
New York, New York 10005

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2 16a
3 EXCERPTS FROM TRANSCRIPT.
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24 THE COURT: Have you got cases? You have not
25 even briefed this.

1 MR. COYNE: I have a case, your Honor, which I
2 was going to cite today.

3 THE COURT: Are you going to cite it?

4 MR. COYNE: I have it right with me.

5 THE COURT: You had better cite it. You had
6 better do something about it because I am going to
7 decide the case today one way or the other.

8 MR. MADDALENA: May I continue, your Honor?

9 THE COURT: Just wait, you will have plenty of
10 time. Let us not keep talking one after the other.
11 You will have plenty of time to brief it after the
12 evidence when you can sum up. Let us not try to answer
13 every question that each side poses.

14 MR. COYNE: This man is not a seaman. He is a
15 longshoreman. There is some question as to whether or
16 not a longshoreman should be treated the same way as a
17 seaman should but I will go into it.

18 THE COURT: On releases, why should it make any
19 difference?

20 MR. COYNE: First of all, the law with respect
21 to seamen is entirely different as to anybody else.

22 THE COURT: On releases?

23 MR. COYNE: On releases.

24 THE COURT: Give me one example. Have you a
25 case holding that?

* * *

1 the burden is on the person who set it up and that
2 would be you in this case, right?

3 MR. COYNE: Yes.

4 THE COURT: On the other hand, if he brings it
5 in and says this is not an action for damages but he
6 brings it in as a declaratory action and as a plaintiff,
7 I think the burden is on him, that is another matter.
8 I do not have your cases. You might give them to me so
9 I could read them.

10 MR. COYNE: I think, your Honor, that there are
11 different factors that influence the Court with respect
12 to seaman's release.

13 THE COURT: Have you a case?

14 MR. COYNE: Yes.

15 THE COURT: Let me see it.

16 MR. COYNE: Clinton v. United States 254 F. 2409.
17 cert denied 358 U.S. 941.

18 MR. MADDALENA: May I be heard briefly?

19 THE COURT: He has not finished. You cannot
20 bob up and down, you have to give the other fellow a
21 chance. He has not finished.

22 Have you tried cases in federal court before?

23 MR. MADDALENA: Yes, your Honor, one or two.

24 THE COURT Well, you just cannot do that, you
25 have to restrain yourself.

1 A F T E R N O O N S E S S I O N (2:15 p.m.)

2 MR. COYNE: Your Honor, we want to produce
3 Mr. Lasoff. He was here this morning but he went back
4 to his office. We will go along until Mr. Lasoff comes.
5 I want to get through with this. I have a case start-
6 ing tomorrow morning.

7 MR. MADDALENA: I will call Giuseppe Capotorto.

8 A N T H O N Y R . A M A R A N T E , having been first
9 duly sworn as an Interpreter, interpreted the follow-
10 ing questions and answers put to the plaintiff,

11 Giuseppe Capotorto:

12 G U I S E P P E C A P O T O R T O , having been furst duly
13 sworn, took the witness stand and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MADDALENA:

16 Q Please state your address, Mr. Capotorto.

17 A 1357 64th Street, Brooklyn.

18 Q On October 6, 1972, were you employed as a
19 longshoreman aboard the steamship IMPERIAL in Brooklyn?

20 A Yes, sir.

21 Q And while you were so employed, sir, did you meet
22 with an accident?

23 A Yes.

24 Q And would you tell the Court please what
25 happened?

Capotorto-direct

A We were discharging coffee. On the floor, the steel floor, there was loose coffee. While we were lifting up the sack to put it onto the pallet, my foot slipped and I went down and I hurt my back.

Q Mr. Capotorto, are you a United States citizen?

A Yes, sir.

Q Do you read English?

A No.

Q Do you write English?

A No.

Q Do you speak English?

A A little bit. A lot of things I don't understand.

8 Did you go to school?

A Where?

Q Anyplace.

A In Italy, yes.

Q How high in school did you go in Italy?

A Eighth grade.

21 Q During your life, Mr. Capotorto, what jobs have
22 you held?

23 A In Italy I shipped aboard vessels and here at
24 the beginning I worked as a baker and I made bread, then I
25 came to Brooklyn and I worked as a longshoreman.

3 1 Q Did you receive any medical attention for the
2 injuries you sustained on October 6, 1972?

4 A Yes.

5 Q From whom did you receive medical attention?

6 A First from Dr. Ritzman.

7 Q And thereafter?

8 A And thereafter the doctor sent me to, the
9 company sent me to Dr. Talagambee. I then received a letter
10 telling me to go see Dr. Vaccarino, who was going to examine
11 me.

12 Q Did Dr. Ritzman tell you what was wrong with you?

13 A Yes, he told me I had a sprain to my back, the
14 muscles of my back.

15 Q Did there come a time -- withdrawn.

16 Q Did Dr. Ritzman speak any Italian?

17 A No.

18 Q Did there come a time --

19 THE COURT: Dr. Ritzman did not speak Italian.
20 How did you know he told you you had a sprain in your
21 back?

22 THE WITNESS: He had me understand it with the
23 little I knew that there was a sprain to my back.

24 Q Did there come a time you went to see Dr. Frank
25 Vaccarino?

4 1 Capotorto-direct

2 A Yes. When they sent me the letter, I went to
3 see him.

4 Q When for the first time did you see Dr. Vacarrino?

5 A November 1972.

6 THE COURT: Ask him if Dr. Vacarrino spoke and
7 understood Italian.

8 THE WITNESS: Yes, sir.

9 Q And Dr. Vacarrino, did he discuss your case with
10 you?

11 A Yes, he was trying to find out what was wrong
12 with me.

13 Q Did he tell you what was wrong with you?

14 A Yes, he told me just as Dr. Ritzman had told me,
15 I had a sprain to my back.

16 Q Now, Mr. Capotorto, did there come a time when
17 you engaged an attorney to represent you with respect to your
18 claim, as a result of your accident of October 6, 1972?

19 A Yes, sir.

20 Q And whom did you retain, sir?

21 A The attorney Lasoff.

22 Q Would you describe for us please what Dr. Ritzman
23 and Talagambee did for you during the first year following
24 your accident?

25 A After Dr. Ritzman and Dr. Talagambee gave me the

5

Capotorto-direct

1 treatments I wore a girdle, as I am wearing now, around my
2 body (indicating).

3 THE COURT: They call it a corset, don't they?

4 THE INTERPRETER: Yes, your Honor.

5 A This was ordered for me by Dr. Ritzman.

6 Q Did there come a time, Mr. Capotorto, when
7
8 Mr. Lasoff contacted you?

9 THE COURT: Just a moment, I want to ask a
10 question. Mr. Lasoff is not here?

11 MR. COYNE: He is on his way.

12 THE COURT: I just did not want him sitting in
13 here while the defendant is testifying.

14 MR. COYNE: We will have him excluded when he
15 does come in.

16 (The last question was read.)

17 THE WITNESS: Yes.

18 Q When was that?

19 A A few months after the incident.

20 Q And did you go to his office, sir?

21 A Yes.

22 Q And what happened there, sir?

23 A I was trying to tell him I had gotten hurt and
24 he wrote everything down and said, O.K.

25 Q Did there come a time in December 1974, sir, when

6 1 Capotorto-direct 68

2 you saw Mr. Lasoff again?

3 A Yes.

4 Q How did you come to see Mr. Lasoff in December
5 1974?6 A He sent me a letter stating he wanted to talk
7 to me in the office.8 Q Now, sir, if you will, between the time that
9 you first saw Mr. Lasoff and the time you saw him in December
10 1974, did you ever meet with Mr. Lasoff?

11 A No, not that I remember.

12 THE COURT: No one has fixed the first time
13 that Mr. Lasoff contacted the plaintiff.

14 When did you first contact Mr. Lasoff?

15 THE WITNESS: A few months after the accident,
16 sir.

17 THE COURT: The accident was in October of 1972.

18 Would you say December of 1972 or January 1973 or
19 November 1972?20 THE WITNESS: Either November or December, I
21 believe, your Honor.22 Q During the interval between the happening of your
23 accident and December of 1974, were you working?

24 A Yes, when I felt well, yes.

25 Q And did there come a time you did not feel well,

1 2 Mr. Capotorto?

3 A Many times I did not feel well.

4 Q Did you ever go to work when you did not feel
5 well?

6 A I did not go to work, I did not go to work with
7 my gang.

8 Q During this interval, Mr. Capotorto, were you
9 receiving what is called GAI, Guaranteed Annual Income?

10 A Yes.

11 Q Will you describe to the Court if you would what
12 this means?

13 A We would be receiving money from the Union if
14 we went every morning to the hiring hall and we would punch
15 our seniority card. If there was work, I would have to go.
16 If there was not any, I would go back home and I would be
17 paid the same thing.

18 Q Now, do you recall the day in December of 1974
19 when you visited Mr. Lasoff's office?

20 A Yes. I remember very well because it was
21 Christmas Eve.

22 Q And did Mr. Lasoff give you a paper to sign at
23 that time?

24 A Yes.

25 MR. MADDALENA: May I have it marked for

8 1 Capotorto-direct

2 identification?

3 THE COURT: You can mark it for identification.

4 THE CLERK: Plaintiff's Exhibit 2 marked for
5 Identification, Document dated 12/24/74.

6 Q Mr. Capotorto, I show you Plaintiff's Exhibit 2,
7 marked for Identification, and I ask you if this is the paper
8 that Mr. Lasoff presented to you on December 24, 1974?

9 A Yes, I recognize my signature and the paper was
10 like this.

11 Q That is your signature, Mr. Capotorto?

12 A Yes, sir.

13 Q Did you have some discussion --

14 THE COURT: If you are going to ask him about
15 this, you had better offer it in evidence.

16 Show it to these gentlemen.

17 MR. MADDALENA: Your Honor, I offer Plaintiff's
18 Exhibit No. 2 for Identification in Evidence, at this
19 time.

20 MR. COYNE.

21 THE CLERK: Plaintiff's Exhibit 2 marked for
22 Identification received in Evidence.

23 Q Prior to your signing this paper, Mr. Capotorto,
24 did you have some discussion with Mr. Lasoff?

25 A He kept me there only for a very short time and

1 Capotorto-direct

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2 he told me I would have to sign there because we were going to
3 get some money.

4 THE COURT: He did not exactly answer your
5 question.

6 Did you have a discussion with him?

7 Q Yes or no.

8 A Yes. He had me understand that I had to sign
9 these certain papers so I could get a certain amount from the
10 company.

11 Q Did you say anything to him at that time,
12 Mr. Capotorto?

13 A I told him at times my back always hurts me.
14 He said don't worry about it, if it becomes aggravated more,
15 we will have another case.

16 Q At that time did you sign this document?

17 A Yes.

18 Q At that time, sir, what was the last medical
19 diagnosis you had with respect to your back injury?

20 A The sprain to my back, what the doctor told me
21 before.

22 THE COURT: When was the last time you had any
23 medical attention concerning this before December 1974?

24 THE WITNESS: I think it was in February of 1973
25 when Dr. Talagambee told me I could go back and try to

1 2 work.

3 Q Did he tell you at that time what your condition
4 was?

5 A I told him at that time that I still had pain
6 to my back but he said to me with the treatments, the lamp
7 treatments, it would go away and that I was always to wear
8 the corset.

9 Q Did Dr. Talagambee speak to you in English or
10 Italian?

11 A In Italian.

12 Q Did there come a time, sir, you no longer were
13 Dr. Talagambee's patient?

14 A Yes.

15 Q Why did you stop seeing Dr. Talagambee?

16 A Because I did not think it was opportune for me
17 to back to see Dr. Talagambee. He said I could go back to try
18 to work and I was to wear the corset always.

19 Q Did there come a time, sir, after you signed
20 the release when something happened?

21 A Yes.

22 Q What happened?

23 A Two weeks after that, the base of my back and
24 my spine, I had pain.

25 Q Did you go to anybody at that time?

1 A Yes, I went to the clinic, the longshoreman's
2 clinic.

3 Q Anybody else?

4 A Yes, after that I went to see Dr. Vaccarino on
5 my own account.

6 Q Did you pay Dr. Vaccarino for that visit?

7 A Of course.

8 Q How much did you pay him?

9 A The first visit was for \$40 because he gave me
10 injections for the various pains I had.

11 Q Did Dr. Vaccarino and you have any discussion
12 relative to hospitalization at that time?

13 A Yes. He had me go and get the X-rays at the
14 clinic and after he saw them he said to me to go to the hospital
15 tomorrow.

16 Q And what hospital was that, sir?

17 A Holy Family I think the name of the hospital is.

18 Q And when you were in the hospital, Mr. Capotorto,
19 did Dr. Vaccarino tell you what was wrong with you?

20 A Yes.

21 Q What was it sir?

22 A Herniated disc.

23 Q Let me ask you this, Mr. Capotorto. When did you
24 go into the hospital?

1 A The 14th of January 1975.

2 Q And when did you come out, sir?

3 A I think it was 7 February, 1975.

4 Q And while you were in the hospital, sir, what
5 did they do for you?

6 A They put weights on my legs and in traction and
7 I got massages, manual massages and massages by machine. He
8 would give me injections and I was that way in the hospital
9 for all of the 26 or 27 days.

10 THE COURT: When did you first come in?

11 THE WITNESS: The 14th of January.

12 THE COURT: When did you get out?

13 THE WITNESS: The 7th of February.

14 Q And, sir, after you got out of the hospital did
15 you return to Mr. Lasoff's office?

16 A Yes. After a day or two I sent to see him to
17 tell him everything that happened to me, that I had been at
18 the hospital in traction with weights and to advise the company
19 to start a new claim for 1972 because Dr. Vaccarino told me
20 this was a result of that accident. But the lawyer told me
21 it could not be done and I asked him why, why can't he do it,
22 and then he told me to come back tomorrow and bring someone
23 who speaks Italian because we do not understand each other.

24 That day I went back with a friend of mine who spoke

1 Italian and he told me that the signature that I placed on
2 that paper, he could no longer do anything and I told him to
3 give me that paper and I would ask another lawyer if it was
4 true what he was saying.

5
6 THE COURT: Let me ask you this. Was this
7 release ever delivered to the defendant?

8 MR. COYNE: Yes, it was, your Honor.

9 THE COURT: Well, was the check delivered at the
10 same time?

11 MR. COYNE: No, it was not.

12 THE COURT: Was the release ever really executed
13 or is this an executory release?

14 What I am saying is generally when a release is
15 signed, money is passed. That did not happen here.
16 Did this lawyer have -- did Mr. Lasoff have the release
17 in his hands when you went to him in December, December
18 1974?

19 THE WITNESS: I do not know, he got it from
20 somewhere and he brought it to me.

21 THE COURT: He still had it in 1974?

22 THE WITNESS: On a table -- a desk.

23 THE COURT: After he came out of this hospital
24 you went to Mr. Lasoff's office, is that right?

25 THE WITNESS: Yes.

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2 THE COURT: So that must have been in 1975?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: When in 1975?

5 THE WITNESS: I came out of the hospital on
6 the 7th of February and I went to see him a day or two
7 later.8 THE COURT: Let us say February 9 or 10 you saw
9 him. Now, did he have that release in his hands, did
10 he have the release in his office?

11 THE WITNESS: Yes, sir,

12 THE COURT: You saw it?

13 THE WITNESS: Yes, he showed it to me. He said
14 to me, "You signed it."15 THE COURT: You told him not to deliver it,
16 didn't you?17 THE WITNESS: Yes, sir. What I said to him was
18 to add to the case everything that had happened to me
19 later on. But he said to me, "You already got the
20 money."

21 THE COURT: Did he already get the money?

22 THE WITNESS: No, that is what I said to him,
23 I did not see anything, I did not receive anything,
24 and I did not know either that upon signing that paper
25 I could no longer do anything.

2 MR. MADDALENA: Your Honor, may I address the
3 Court?

4 Item 16 and 17 of the defendant's answer admits
5 that the plaintiff has not accepted any money pursuant
6 to the release.

7 MR. COYNE: It has been offered and he has
8 refused it. We had a check here in August and he
9 refused it.

10 THE COURT: That is not the point I am trying
11 to make. When Mr. Lasoff had this release in his
12 office in February of 1975, had your client, Mr. Coyne,
13 delivered any checks to Mr. Lasoff? What is the
14 date of the check you have?

15 MR. COYNE: January 22, 1975.

16 THE COURT: You had not received your lease at
17 that time, either, did you?

18 MR. COYNE: Your Honor, I believe the release
19 was sent out in quadruplicate, which is normal. A copy
20 has to go to the steamship company.

21 THE COURT: When did you receive the release?

22 MR. COYNE: December 26th was when the release
23 was sent back.

24 THE COURT OF 1974?

25 MR. COYNE: 1974, yes. On the same day I believe

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1 **Capotorto-direct**

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2 **the action which was brought in the Southern District**
3 **of New York was discontinued.**

4 **(Continued on next page.)**

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2 THE COURT: Did you have another action in
3 Southern District of New York?4 MR. COYNE: Yes, he asserted an action in the
5 Southern District of New York.

6 THE COURT: In the same case?

7 MR. COYNE: Same case.

8 THE COURT: You mean you had two actions pending.

9 MR. COYNE: That was discontinued.

10 THE COURT: But he did bring two actions.

11 MR. COYNE: Yes sir.

12 THE COURT: For the same action.

13 MR. COYNE: Yes sir.

14 THE COURT: The same lawyer did this or did he
15 have two lawyers?

16 MR. COYNE: No, Mr. Lasoff brought the case.

17 THE COURT: We know that he brought the case
18 here.19 MR. COYNE: No sir, he brought it in the
20 Southern District of New York.. Mr. Maddalena has
21 brought two actions here, this action and he has
22 brought another here for damages.23 THE COURT: I do not care about that, I might
24 a little later. But this witness said that Mr. Lasoff
25 had the release signed, the release on his desk in

2 February.

3 MR. COYNE: Yes, he no doubt kept a copy.

4 THE COURT: That was a copy not the original?

5 He had already sent you the original?

6 MR. COYNE: It was not a written copy but it was
7 a copy.8 THE COURT: But he had already sent you a signed
9 original?10 MR. COYNE: Yes, sir. They usually send more
11 than one back.

12 THE COURT: Anyway he sent you a signed original.

13 MR. COYNE: Yes, sir.

14 THE COURT: That was in December.

15 MR. COYNE: December 26th as I understand it.

16 THE COURT: He signed it on December 24.

17 MR. COYNE: Yes.

18 THE COURT: Of 1974, is that right?

19 MR. COYNE: That is correct.

20 THE COURT: And then Mr. Lasoff sent it to you
21 on December 26th, is that right?

22 MR. COYNE: Yes.

23 THE COURT: When did you give him the check?

24 MR. COYNE: I did not do it, your Honor.

25 THE COURT: However it was done, I do not care

3 1 Capotorto-direct

2 about that.

3 MR. COYNE: The check was given on January 22,
4 1975.

5 THE COURT: Was it given to Mr. Lasoff?

6 MR. COYNE: Right.

7 THE COURT: And then it was only after that that
8 you visited Mr. Lasoff and at that time the thing was
9 completed?

10 THE WITNESS: But I did not know that, I knew
11 nothing about it.

12 MR. MADDALENA: If your Honor would permit me,
13 if I may, I would respectfully call for the production
14 of the cancelled check pursuant to subpoena served.

15 THE COURT: What cancelled check?

16 MR. MADDALENA: The cancelled check from the
17 defendant allegedly to Mr. Capotorto and Mr. Lasoff.

18 THE COURT: The check was never accepted. What
19 is the use of going through that?

20 MR. MADDALENA: No your Honor, he has a cancelled
21 check.

22 THE COURT: I thought he never accepted the
23 money. Let me see it. Is Mr. Lasoff here.

24 MR. COYNE: He is outside your Honor.

25 THE COURT: Where is the cancelled check? I

4 1 Capotorto-direct

2 thought he said he never accepted any money. Let me
3 look at it. Can I look at the check as a tryer of the
4 facts?

5 MR. MADDALENA: Certainly, your Honor.

6 THE COURT: No, I am asking Mr. Coyne.

7 It is a cancelled check, isn't it? I thought
8 you said it was never accepted. Didn't you tell me
9 he never received any money?

10 MR. MADDALENA: Yes sir. I am going to ask him
11 if this is his signature, if I may.

12 May I have it marked for identification?

13 THE COURT: You may mark it in evidence if he
14 has no objection. Do you have any objection to his
15 having it marked in evidence?

16 MR. COYNE: No, except on the grounds of
17 relevancy. The man signed a release.

18 THE COURT: I certainly do not understand your
19 objection, overruled.

20 THE CLERK: Plaintiff's Exhibit 3, a photocopy
21 of check dated 1/22/73 in the amount of \$12,500
22 received in evidence.

23 (So marked.)

24 THE COURT: What is the date of this check?

25 MR. MADDALENA: January 22, 1975.

2 BY MR. MADDALENA:

3 Q I show you, Mr. Capotorto, Plaintiff's Exhibit 3
4 in evidence and I ask you to examine it, examine the reverse
5 side of that exhibit and I ask you if that is your signature
6 that appears on the reverse side of that exhibit.

7 A No, no.

8 THE COURT: Well, this becomes thicker and
9 thicker, doesn't it? Let me see it.10 MR. MADDALENA: May I be heard very briefly,
11 your Honor?

12 THE COURT: Yes indeed.

13 MR. MADDALENA: It is my feeling as much as we
14 are dealing with two halves of two instruments?

15 THE COURT: Two halves?

16 MR. MADDALENA: Something stapled to something
17 else, I think the original instrument should be
18 produced.19 THE COURT: I do not think it is two halves, I
20 think it is just showing the back of it which is stapled.21 Where is the original? Can we have the original?
22 Is there any reason why we do not have the original?23 MR. COYNE: The original was in the office of
24 La Morte Burns. This is an exact copy. As I under-
25 stand it, the accounting department has that one

1 Capotorto-direct

2 check and they did not want to release the one check.

3 THE COURT: I do not think I would make any
4 point of that Mr. Maddalena. You represent that as an
5 exact copy.

6 MR. COYNE: Yes, I have been told by the gentleman
7 who was dealing with the case that is so.

8 MR. MADDALENA: Your Honor, I am looking now for
9 the date stamp, when this instrument cleared the
10 depository bank, so I can find out when it was deposited.
11 I cannot seem to make it out.

12 THE COURT: Let me see it. It is 1975. I can
13 see that. It says paid to the order of --

14 MR. MADDALENA: Your Honor, if I may be heard.

15 THE COURT: You may be heard all the time but I
16 do not see anything except January 1975.

17 MR. MADDALENA: My point is this, your Honor, if
18 I might. The plaintiff was hospitalized from January 14
19 to February 7, 1975. Yet this check apparently was
20 issued January 22nd and cleared the bank in January of
21 the same month while the plaintiff was in the hospital.

22 THE COURT: Well, I do not know whose signature
23 this is up here. Ask him to look at it.

24 Is that not your signature?

25 THE WITNESS: No, sir, this is not my signature.

7 1 Capotorto-direct

2 THE COURT: Did you get any money at all?

3 THE WITNESS: Nothing your Honor since the 14th
4 of January I got not a penny from nobody.

5 THE COURT: Whathappened here, do you know?

6 MR. MADDALENA: I suspect, I do not know, I
7 suspect that the check was endorsed without Mr.
8 Capotorto's permission and deposited.

9 THE COURT: Who deposited it?

10 MR. MADDALENA: I do not know. I will call for
11 the production by Zimmerman and Zimmerman of this money.

12 THE COURT: He said he got nothing.

13 MR. MADDALENA: The debt was repaid, \$12,500 by
14 Zimmerman and Zimmerman.

15 THE COURT: Did you get repaid?

16 MR. COYNE: Cancelled checks go back to him, we
17 did not make any copies.

18 MR. MADDALENA: But they did receive a Zimmerman
19 and Zimmerman check in the amount of the check they
20 sent in Capotorto to Zimmerman and Zimmerman.

21 MR. COYNE: Yes, that is true.

22 THE COURT: What is the date?

23 MR. COYNE: I believe we received the money in
24 April, April 3, 1975, at which time we were told for
25 the first time that Mr. Capotorto did not want to go

Capotorto-direct

2 through with the settlement.

3 THE COURT: Who put his name on this? I would
4 like to know that, do you have any idea?

5 MR. COYNE: I have no idea.

6 MR. MADDALENA: Your Honor, it is apparent, if I
7 may, that the check was issued in January and it cleared
8 the bank the same month. All during that interval,
9 from January 22nd, Mr. Capotorto was in the hospital.

10 THE COURT: You made that point, I have gotten
11 that already.

12 MR. MADDALENA: During this interval only one
13 firm had custody of the check, Zimmerman and Zimmerman.
14 I do not know who in that firm endorsed this.

15 THE COURT: I just want to know who scratched
16 Giuseppe Capotorto on the back of that check. You say
17 it must be somebody in Zimmerman and Zimmerman's office.

18 MR. MADDALENA: That is speculating, your Honor.

19 THE COURT: Which is Mr. Lasoff's office, is
20 that right?

21 MR. MADDALENA: Yes, your Honor.

22 THE COURT: And then he did not pay it back
23 until April 1975, is that right?

24 MR. COYNE: That is when the ship owner's
25 representatives received the check for the same amount,

2 \$12,500.

3 BY MR. MADDALENA:

4 Q Mr. Capotorto, did you meet with an accident in
5 June 1974?

6 A Yes, sir.

7 Q Tell the Court what happened.

8 A I was working down in the hatch and I fell down
9 a distance of maybe four feet and I injured my knee and my
10 ankle (indicating the right knee and right ankle).

11 Q Did you seek medical aid or attention for that
12 injury, Mr. Capotorto?

13 A Yes.

14 Q And who gave you the medical attention, Mr.
15 Capotorto?

16 A Dr. Guarino.

17 Q What did you tell Dr. Guarino happened?

18 A I showed him my knee, my knee was full of blood
19 and my ankle I could not set my ankle down on the ground and
20 the fall that occurred to me at that time once again my back
21 started to hurt.

22 Q Did you ever see Dr. Vaccarino for that accident?

23 A No.

24 Q Did you have an accident in 1963, Mr. Capotorto?

25 A Yes, sir.

Capotorto-direct

Q Will you tell his Honor what happened please.

A I broke two of my ribs. A pallet fell down and
broke two of my ribs.

Q Did you sustain any injury to your back at that
time?

A No, sir, I just broke two of my ribs.

MR. MADDALENA: You may inquire.

XXX 9 CROSS-EXAMINATION

10 BY MR. COYNE:

11 Q When you had that accident in 1963 did you hire
12 a lawyer to represent you?

13 A Yes, sir.

14 Q Did you settle your case?

15 A Yes.

16 Q Did you have to sign a paper similar to the one
17 you signed for Mr. Lasoff?

18 A I do not know if it was a similar paper as that
19 one but I did sign a paper at that time.

20 Q Did your lawyer tell you what that paper was
21 that you were signing at that time?

22 A Precisely I do not remember because many years
23 have passed since but he told me to sign this paper because
24 the company was going to give him money for me.

25 Q Did he tell you that would put an end to your case

11 1 Capotorto-cross/Coyne

2 A We did not talk about that.

3 THE COURT: Did he tell you you could still sue
4 after he got the paper and you signed the paper?

5 THE WITNESS: The lawyer told me nothing but I
6 thought to myself that in the event anything else would
7 happen to me that I would have the right to go to Court.

8 THE COURT: The lawyer told you nothing.

9 THE WITNESS: That I can remember, no, sir.

10 THE COURT: Who was the lawyer?

11 THE WITNESS: Gritz.

12 THE COURT: Was he located in Brooklyn?

13 THE WITNESS: At that time he was in Brooklyn.

14 Mr. DeCOSTANZO: 186 Montague Street.

15 THE COURT: Is he still there, Mr. DeCostanzo?

16 MR. DE COSTANZO: Yes, sir.

17 Q How many cases have you had altogether?

18 A One in '63.

19 Q And one in 1972 and one in '74?

20 THE COURT: Did you bring a suit in 1974?

21 THE WITNESS: No.

22 THE COURT: Did you get a settlement in 1974?

23 THE WITNESS: No.

24 THE COURT: Did you get a lawyer in 1974?

25 THE WITNESS: I had taken the case to the same

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Capotorto-cross/Coyne

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lawyer, Mr. Lasoff.

3

THE COURT: Did you know he did not bring a suit?

4

THE WITNESS: Which case, your Honor?

5

THE COURT: The 1974, June 1974 case.

6

THE WITNESS: No, he did nothing there. All I
got was weekly payments and compensation.

7

THE COURT: Did you ask Mr. Lasoff to bring a
suit?

8

THE WITNESS: Yes. I said to him I got hurt and
he was to make a case.

9

THE COURT: What did he say?

10

THE WITNESS: Yes, he had me understand that we
were going to have a case.

11

THE COURT: What do you mean on the stand?

12

THE WITNESS: Because I know how to speak a little
English and he doesn't speak Italian but he made me
understand that we were going to have a case.

13

THE COURT: Not on the stand in the courtroom,
you mean he made you understand.

14

THE WITNESS: Understand.

15

THE COURT: Comprehend.

16

THE WITNESS: Yes, understand.

17

THE COURT: You understood you were going to
have a suit?

1 Capotorto-cross/Coyne

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2 THE WITNESS: Yes.

3 THE COURT: Against what company?

4 THE WITNESS: Universal.

5 THE COURT: Do you know he did not bring a suit
6 against Universal?7 THE WITNESS: Yes, I know that he did not make
8 a case.9 THE COURT: Did you say anything to him about
10 that?11 THE WITNESS: I did not talk to him anymore only
12 he sent me some letters telling me to go see certain
13 doctors and I did not go.

14 THE COURT: All right.

15 Q Mr. Capotorto, from the time you went back to
16 work in February 1973 to the time that you saw Dr. Vaccarino
17 in 1975 did you get any treatments for the back condition you
18 got in October 1972 from any doctors?19 A From doctors, no. But when I had pain in my
20 back I would take some pills for the pain and I would put the
21 corset on and wear it always.22 Q Mr. Capotorto, in order to get the guaranteed
23 annual wage you testified you had to punch in. At the time
24 you punch in do you have to be ready to go to work?

25 A Let me explain it to you now. I have a D card,

seniority. When they start to call the people for work they start from the A card and then they go to the C card, that is from A to B, from B to C and then D. When they go from the top to the bottom you are not obliged to take the job. After D you get a medical card and then if they then go to G and to H. When the H is finished then you have to go below to the top. You are then obliged to take a job. They then start once again from H to G and then to F and then --

THE COURT: That is backwards.

THE WITNESS: Yes. You are then obliged to take the job. From the time that it ran from the top to the bottom and then from the bottom to the top there was almost no more but if they had I was obliged to take the job and go to work.

THE COURT: But he had an option before then without being obligated and if he were reached and then he could take the job if he wanted to. Do you understand?

THE WITNESS: Yes, I could take it.

THE COURT: What are we getting into, however, what is the relevancy of this?

MR. COYNE: The man was able to work during this long period. I am only trying to bring that out. He was out of work because of our accident some 19 weeks and he worked from February 1973 into June of 1974 when had this other accident.

(Continued on next page.)

1
2 THE COURT: Well, he worked from February 1973
3 to June 1974, that is what you say. Did you ask him
4 whether that was true or do your records show that?

5 MR. COYNE: Yes, they do.

6 THE COURT: Ask him.

7 Q Mr. Capotorto, after you went back to work in
8 February of 1973 you continued to work until June 1974 when you
9 had another accident; is that right?

10 A Yes. I told you before when I felt like work I
11 would go to work.

12 THE COURT: What happened after June 1974; did
13 he go back to work after that?

14 THE WITNESS: Yes, after three and a half or
15 four months of treatment.

16 THE COURT: That was in October?

17 THE WITNESS: Yes, almost the mid-part of
18 October.

19 Q After you had that accident in June --

20 THE COURT: How long did you work after mid-
21 October 1974?

22 THE WITNESS: Up until the first week of January.

23 Q Mr. Capotorto, after you had this accident in
24 June of 1974 and you went back to work were you able to do the
25 same kind of work that you were able to do before June of 1974?

Capotorto-cross

1 A If I was able I would do it. Even if I had pain
2 I did it. Otherwise they would give me a penalty.
3

4 Q Once you went back to work after your accident
5 in June 1974 did you have more pain than you had before June
6 of 1974?

7 A When I returned in 1974 it was the same as it
8 was in 1972. Every once in a while I had pains in the back
9 but then gradually it increased up until the time I went to the
10 clinic. I then went to see Dr. Vaccarino because I was afraid
11 the clinic had told me I had a herniated disc.

12 Q When you were talking with the lawyer,
13 Mr. Lasoff on December 24, at the time you signed this
14 document which is Plaintiff's Exhibit 2, did he promise you
15 any more money than the money you were offered at that time?

16 A In 1974 I signed the document --

17 THE COURT: That is not the answer to the
18 question. When you signed it, did Mr. Lasoff promise
19 you any more money than the figure in that release or
20 document?

21 THE WITNESS: No. When I signed it in 1974 he
22 said sign it, that we are going to get certain monies.

23 Q He did not tell you you were going to get
24 any more money ; is that right?

25 A I was only there five minutes. They had a

2 Christmas Eve party at the time. It is not that I had a lot
of things to talk with him, with Mr. Lasoff.

4 Q Mr. Capotorto, did he promise you any more money
- and the amount in the release?

A No, he did not promise me any more.

7 THE COURT: Did you see the figure in the release?

9 THE WITNESS: No, he told me I was going to get
10 \$6,200 or \$6,300. He was my lawyer and I believed him
and I signed it.

MR. MADDALENA: Does your Honor want the release?

THE COURT: Yes.

Did you read this?

15 THE WITNESS: I do not know how to read, your Honor.

17 THE COURT: You see figures, you understand
figures, don't you?

THE WITNESS: Yes, numbers, yes.

THE COURT: Did you see these numbers on top?

21 THE WITNESS: If I see \$16,182.57 and here I
see \$12,500

23 THE COURT: Didn't you see it at the time you
signed the release?

THE WITNESS. No, because after I spoke to him

I signed it and he said to me, "You are going to get \$6,200 or better."

THE COURT: You did not see those numbers in that release?

THE WITNESS: When I signed it, no. After I had gone to the hospital, yes, because I asked him for a copy of this document.

THE COURT: No, I am talking at the time in the office.

THE WITNESS: No, all I did was sign it. He was my lawyer and I believed what he was saying.

THE COURT: What did he say to you?

THE WITNESS: He said, "Sign this document, that you are going to get \$6,200 or \$6,500," but I told him at times I always have pain to my back and he then said to me if I had more trouble with my back he would make another case.

THE COURT: \$12,500 -- you only were to get \$6,000 out of that?

THE WITNESS: That is what he told me, \$6,200 or \$6,500.

THE COURT: That check is for \$12,500 payable to Mr. Capotorto or in the alternative to Zimmerman & Zimmerman.

5

1 Capotorto-cross

2 Do you have any further witnesses here? Time is
3 marching on.

4 MR. MADDALENA: No, your Honor. Plaintiff rests.

5 THE COURT: Is there anything further, Mr. Coyne?

6 MR. COYNE: One further question.

7 BY MR. COYNE:

8 Q Did you attend a hearing at the United States
9 Department of Labor in December 1973 where Mr. De Costanzo
10 was present?

11 A I went to the Compensation and I believe
12 Mr. De Costanzo was there but I do not remember too well.

13 Q Was your lawyer at that time Mr. Gucciardo?

14 A The man who represented me at that time was
15 Mr. Gucciardo.

16 THE COURT: What were you doing before the
17 Labor Department?

18 THE WITNESS: They called me for a hearing there.

19 THE COURT: A compensation hearing?

20 MR. COYNE: Yes, your Honor.

21 Q Does Mr. Gucciardo speak Italian?

22 A Discreetly, yes.

23 THE COURT: What did you say, discreetly?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: What does that mean?

6 Capotorto-cross

1 THE WITNESS: Not actually perfectly but I
2 understood him.

3 Q Mr. Capotorto; when you signed that paper, which
4 is Plaintiff's Exhibit 2, were these figures on the paper at
5 the time you signed them?

6 A I told you already he told me if I signed it
7 I was going to get this money. I do not read English.

8 THE COURT: What money?

9 THE WITNESS: \$6,200 or \$6,500.

10 THE COURT: He did not say he was going to get
11 \$12,000?

12 THE WITNESS: No, sir.

13 Q When you went to the hearing to the Department
14 of Labor did you make any claim you could not work?

15 A Nobody asked me anything and I did not make any
16 such claim.

17 Q Did you make a claim for additional temporary
18 disability?

19 THE COURT: This was in 1973 in what month?

20 MR. COYNE: December.

21 THE COURT: That was the year before the
22 release was signed.

23 You made no claim for additional injury?

24 THE WITNESS: I personally did not, nobody asked

25

7 1 Capetorto-cross

2 Ms.

3 THE COURT: No one has brought out what claim
4 was made before the Department of Labor. Do you have
5 the claim, Mr. Coyne? If you do, let us find out what
6 claim he did make. Show it to him, the document.

7 MR. MADDALENA: Your Honor, I have no objection
8 but I do not see the relevance. You are free to
9 inquire as the trier of the facts.

10 He was not claiming from implication or
11 inference, a herniated disc, is that what you are
12 trying to say, is that it?

13 MR. COYNE: That is correct.

14 THE COURT: Then you have not brought that out.
15 Who was the doctor?

16 MR. COYNE: The doctor that represented him at
17 that time I think was Dr. Graubard.

18 BY MR. COYNE:

19 Q Were you examined by Dr. Grambard?

20 THE COURT: Tell him when.

21 Q In September 1973.

22 A It may be, I do not remember.

23 Q His office is at 38 East 85th St., New York.

24 A Truthfully, I do not remember but I do know I
25 went for other examinations, whether they would be for the

1 lawyer or for the company.
2

3 Q Were you examined by a Dr. Seth Abramson in
4 September 1973?
5

6 A I do not remember.
7

8 Q Were you examined by Dr. Robert V. Holman in
9 January 1973?
10

11 A It does not come to me but I do not remember it
12 too well.
13

14 Q Were you examined -
15

16 THE COURT: What are we getting at with this?
17 He is going to say he does not remember. What are you
18 proving?
19

20 MR. COYNE: I would like to offer these reports
21 in evidence.
22

23 THE COURT: I do not know whether they are
24 admissible. You will have to take it up with
25 Mr. Maddalena.

MR. COYNE: There are two more reports I would
like to ask him about.
21

THE COURT: Do not ask him about reports if they
are not in evidence.
22

MR. COYNE: I will ask him whether he was
examined.
23

Q Were you asked by Dr. Edwin A. Campbell on
24
25

1. January 9, 1973 and on April 6, 1973.

2. A I repeat to you the names do not come to me. I
3. know I went for various examinations by various doctors.
4.

5. MR. MADDALENA: Your Honor, I have no objection
6. to Dr. Vaccarino's report being received in evidence.
7. However, I do not think a proper foundation has been
8. made with respect to these other physicians.

9. THE COURT: On what basis are you offering these
10. reports?

11. MR. COYNE: Because these are the reports --

12. THE COURT: Are you going to testify?

13. MR. COYNE: No, your Honor.

14. THE COURT: These are the reports of what?

15. MR. COYNE: Of the compensation file.

16. THE COURT: You are saying compensation file.

17. I suppose you are going to try to introduce them as
18. documents kept in the regular course of business.

19. You have no one here, have you?

20. MR. COYNE: I would like to present after
21. Mr. Lasoff, the young man who negotiated the claim.
22. He got these papers. This is what he based his
23. decision on and this is what Mr. Lasoff based his
24. decision on. These are the medical reports both sides
25. used. We did not use any independent doctor.

1 THE COURT: Both sides?

2 MR. COYNE: Both sides.

3 THE COURT: Your side used them, too?

4 MR. COYNE: That is exactly what I am saying.

5 We did not send this man to any doctor. We relied on
6 these doctors' reports which were from the compensation
7 file.

8 THE COURT: Isn't this a loose way to try a case.
9
10 Mr. Coyne? You are making statements here and you have
11 nothing in evidence as to what these doctors' reports
12 are.

13 MR. COYNE: I will not offer them at this time,
14 your Honor. I just thought I might get them in with
15 Plaintiff's consent.

16 THE COURT: If he agrees, all right.

17 MR. COYNE: He does not agree so I will stop
18 right there.

19 MR. MADDALENA: Plaintiff rests, your Honor.

20 THE COURT: Is there anything else? You may
21 step down, Mr. Capotorto.

22

23

24

25

2 MARTIN LASSOPP, called as a witness, having
3 been first duly sworn by the Clerk of the Court,
4 testified as follows:

DIRECT EXAMINATION

6 || BY MR. COYNE:

7 Q Mr. Lasoff, you are an attorney duly licensed
8 to practice in the State of New York?

9 A Yes, sir.

Q How long have you been so licensed?

A Twenty-one, twenty-two years.

12 Q With what firm are you associated?

A Zimmerman & Zimmerman.

Q Do you specialize in any particular kind of law?

A Maritime law as a strict specialty, some

16 || negligence.

17 THE COURT: Which today is almost the same
18 thing, isn't it?

19 THE WITNESS: Yes, your Honor.

20 Q How many cases, roughly, have you handled
21 involving personal injuries to longshoremen?

22 A In my career?

23 Q Yes.

A That is a good question. I would say approximately between five and ten thousand.

1 Q Were most of those cases settled?

2 A Yes, I would say 98 per cent.

3 Q Did you represent Mr. Capotorto in connection
4 with a claim against the operators of the SS IMPERIAL?

5 A Yes.

6 Q Did you bring an action on his behalf in the
7 United States District Court for the Southern District of New
8 York?

9 A Yes, I did. I believe a summons was served on
10 September 30, 1974 in that court. I believe there was a prior
11 action started in Supreme Court, New York County on
12 February 9, 1973.

13 Q Did you subsequently enter into a settlement
14 negotiation with the representatives of the vessel owner?

15 A Yes, I did.

16 Q Do you remember when you first entered into
17 settlement negotiations?

18 A Not really.

19 Q Would it be around October 28, 1974; does that
20 refresh your recollection?

21 A It would be hard for me to say that because the
22 particular claims representative I was dealing with, Mr. Billyer,
23 had a great many cases with me and I had no particular reason
24 to know the exact date I discussed the case with him.

1 Q Did you discuss it with him on more than one
2 occasion?

3 THE COURT: What is his name?
4

5 THE WITNESS: Wayne Billyer.
6

7 THE COURT: He represented who?
8

9 THE WITNESS: He represented the owner, the
10 Chilean Line, your Honor.
11

12 THE COURT: Not the insurance company?
13

14 MR. COYNE: No, that was the stevedore.
15

16 THE WITNESS: It is quite probable that I
17 discussed the case on several occasions with Mr. Billyer
18 because Mr. Billyer would give up money like it was his
19 own.
20

21 Q When do you remember you finally reached a
22 settlement?
23

24 MR. MADDALENA: May I move to strike so much of
25 the witness' last answer as gratuitous?

THE COURT: Well, this is a case without a jury.
Mr. Billyer could have been a very wealthy man and let
the money flow off the ends of his fingers for all I
know. I do not know him. It is meaningless.

Q Do you remember when you arrived at the
settlement figure which both you and Mr. Billyer were willing
to recommend?

1
2 A Let me take a look at my file. It would possibly
3 be somewhere in October or November 1974.

4 MR. MADDALENA: Your Honor, may I urge what is
5 possible be stricken as speculative, please?

6 THE COURT: Well, do you think it is probable?

7 THE WITNESS: I think it is highly probable.

8 THE COURT: I will take it.

9 MR. MADDALENA: I will withdraw the objection.

10
11 (continued next page)

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Lasoff-direct

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Q Did Mr. Billyer subsequently tell you he had received approval to settle the case from his shipowners and the shipowners' underwriters?

A Mr. Billyer sent me I believe four or five releases with the amount of the settlement we had agreed upon which I knew he had approval for.

THE COURT: What amount did you agree upon?

THE WITNESS: \$16,182.57 inclusive of compensation lien of \$3,682.57 or a net settlement of \$12,500.

Q After you got those releases what did you do?

A I sent a letter to Mr. Capotorto and this is a copy of the letter. This is a memorandum letter which has white and yellow sheets with carbons in between and this is an exact copy, one of the inside copies of that letter of December 18, 1974.

Q Did you ask him to come to your office?

A The letter reads --

THE COURT: No, are you going to introduce the letter?

MR. COYNE: I will offer it.

THE COURT: Do not do it for my pleasure. If you are going to ask him to testify on it it has to be in evidence.

2

1 Lasoff-direct

2 MR. MADDALENA: No objection.

3 MR. COYNE: I offer the letter in evidence.

4 THE CLERK: Defendant's Exhibit A, letter dated
5 12/18/74 received in evidence.

6 MR. COYNE: Would you like to see this?

7 THE COURT: Yes, I would. Did he telephone you
8 then?9 THE WITNESS: I do not think so, your Honor,
10 I think he just came in.

11 Q Do you remember when he came in?

12 A I believe he came in the day before Christmas,
13 December 24th.14 Q Did you have a conversation with him at that
15 time about the proposed settlement?

16 A Yes I did.

17 Q What did you tell him about the settlement?

18 THE COURT: In 1974, right?

19 THE WITNESS: Well, Mr. Capotorto does not
20 speak a great deal of English. I explained to him
21 that we had an offer of settlement of \$16,182.57
22 minus the money he had already received in compensa-
23 tion, some \$3,682.57, or \$12,500 in new money and I
24 explained to him that based on the figures on this
25 case his share of the settlement would be \$6,750.

3 1 Lasoff-direct

2 THE COURT: How did you figure that out?

3 THE WITNESS: The amount from the division fee
4 schedule which comes to exactly or approximately that
5 figure.

6 THE COURT: One half?

7 THE WITNESS: No, your Honor, my fee is computed
8 on the \$16,182.57 that I settled the case for, besides
9 which \$6,750 is not one half of \$12,500.

10 THE COURT: Well, it is pretty close to it.

11 THE WITNESS: That is true but not quite.

12 THE COURT: Did he sign a retainer?

13 THE WITNESS: Yes, I have the retainer right
14 here which calls for a fee schedule in accordance
15 with the amount division rules and it says specifically
16 on the retainer there shall be no deductions for any
17 liens of insurance companies or carriers for compensa-
18 tion.

19 Q When you told him what the settlement offer
20 was, Mr. Lasoff, what did he say?

21 THE COURT: Let me see the percentage. You
22 get \$3,00 off the \$16,000, right?

23 THE WITNESS: No, my fee is based on the \$16,000.

24 THE COURT: All right, I know your fee is
25 based on the \$16,000. You get 50 percent of the

4 1 Lasoff-direct

2 first \$1,000, right?

3 THE WITNESS: Right.

4 THE COURT: That is \$500. You get 40 percent
5 off the next two and that is \$800. That brings you
6 down to \$15,000 roughly, I believe.

7 THE WITNESS: \$13,000, I believe.

8 THE COURT: Then you have 35 percent off
9 \$13,000 and that brings you to \$4,550.

10 THE WITNESS: I am not doing it on paper. I
11 know \$15,000 under the fee schedule would be \$5500
12 so if I add \$350 it would be \$5850. Actually the
13 fee I agreed on was \$5750.

14 MR. COYNE: Would you read the last question?
15 (The last question was read.)

16 A He said is that all?

17 Q What did you say?

18 A Well, I explained any money that he got from
19 compensation he had to pay back or rather I explained the
20 best way I could and he complained to me at that time that
21 his back still bothered him. I pointed out to him as far as
22 my file reflected he had not seen a doctor for a year and
23 a half and he signed the papers.

24 Q He signed the release?

25 A Yes.

La soft-direct

Q Did you explain to him that after he signed the release he could no longer bring any other claim against this steamship company?

A I explained -- I did not use that fancy language to Mr. Capotorto. I told him that this would end his case and he would not get any more money.

Q After you told him that, is that when he signed the release?

A Yes

Q This was a release that had been sent to you by or handed to you by Mr. Billyer?

A Sent by mail by Mr. Billyer and prepared by
him, not by me.

THE COURT: Where is that release? Let me
look at that.

All right, proceed.

Q Subsequent to the time that he signed the release did Mr. Capottorto tell you he did not want to go through with the settlement?

A Yes.

When was that?

Wait a moment, let me ask a question. Is this his signature on the release?

MR. COYNE: Yes, he admitted that there is no

Lasoff-direct

2 issue on that.

3 THE COURT: The reason I say that is that he
4 denies the signature on the check.

5 Q I believe I asked you, did he subsequently come
6 to you and say that he did not want to go through with this
7 settlement?

8 A Mr. Capotorto called me on half a dozen
9 occasions and also I believe came to see me several times
10 and what he wanted me to do was call Piston and reinstate
11 his compensation payments because he was having trouble
12 with his back. I explained I couldn't do that, that he had
13 signed a release. He insisted I could but he did call me
14 and did come to see me.

15 Q At any time while you were talking with him
16 and before he signed the release did you tell him if in the
17 future his back bothered him he could make another claim
18 against the company?

19 A No, not for that action.

THE COURT: What did you say?

21 THE WITNESS: I do not know that we discussed
22 it at all.

23 THE COURT: Well, he said his back was still
24 bothering him at the time he signed this release.
25 Did you say anything to him abo 't that pain in his

Lasoff-direct

2 back?

3 THE WITNESS: I explained to him that under
4 the Federal law each episode of pain in the back is
5 construed as a separate act and if his back did bother
6 him and he did have trouble with it he would have no
7 problem filing a claim which would be treated as a
8 separate act.

9 Q You are referring to a compensation claim?

10 A Yes

11 THE COURT: Wait a minute, what do you mean
12 by that? Do you mean every time he has a separate pain in
13 the back he could bring a suit in this court?

14 THE WITNESS: No, your Honor. I am referring
15 to a compensation proceeding at the United States
16 Department of Labor.

17 THE COURT: Did he know you were referring to
18 that?

19 THE WITNESS: I assume so. We handled his
20 case at the United States Department of Labor before.

21 THE COURT: You handled it before at the
22 United States Department of Labor?

23 THE WITNESS: Yes

24 THE COURT: Was he talking about the United
25 States Department of Labor?

1 **Baseoff-direct**

2 **THE WITNESS:** I do not know whether he was
3 talking about anything, your Honor. I said if you really
4 have trouble with your back you are protected by law for
5 a work-related injury. I said to him, "You have not seen
6 a doctor for 18 months and it would be very hard for me
7 at this stage of the game to bring in proof or try to
8 bring in proof your back has been bothering you for 18
9 months without ever having seen a doctor."

10 **THE COURT:** You did not tell him he could
11 bring another suit in this court?

12 **THE WITNESS:** No sir.

13 **THE COURT:** For any pain in the back he might
14 have subsequently?

15 **THE WITNESS:** No sir, definitely not.

16 **THE COURT:** You told him you were referring to
17 Workman's Compensation?

18 **THE WITNESS:** Yes, your Honor.

19 **THE COURT:** And he says he does not understand
20 much English. Did you get the impression he understood you
21 when you so stated?

22 **THE WITNESS:** I really could not say now. My
23 recollection of the conversation is not that specific as
24 for me to say whether he understood me or not. Mr. Capotorto
25 I felt understood that money. Incidentally, I did get a

Lasoff-direct

2 call from somebody who did speak Italian within a half-hour
3 after this man signed the release.

4 THE COURT: And --

5 THE WITNESS: He asked me to go over the
6 figures and I did nad that was the last I heard of it
7 until I started getting calls from Mr. Capotorto.

THE COURT: Who was this man, do you know?

9 THE WITNESS: He is sitting in the back of
10 the room there, a man by the name of Michael Conso,
11 wearing a yellow shirt.

12 THE COURT: Well, we will put him on the stand
13 in a little while.

14 MR. MADDALENA: Your Honor, I subpoenaed him
15 for rebuttal.

16 THE COURT: How do you know there is going to
17 be a rebuttal? All right, go ahead.

18 MR. MADDALENA: That is a lawyer's judgment,
19 your Honor, and I availed myself of it.

20 BY MR. COYNE:

Q Mr. Lasoff, did you make it clear to
Mr. Capotorto that he could not make another claim against
this steamship company after he signed the release?

24 A Yes, I did.

When you were dealing with Mr. Billyyer, the

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1 Lasoff-direct

2 steamship company representative, what medical reports
3 were you relying on?

4 A Since, as I said, we did represent this man
5 in his initial claim in compensation and we have a complete
6 and separate compensation file, we have Dr. Ritzman's
7 report, Dr. Talagamble's report, Dr. Vaccarino's report,
8 Dr. Campbell, who is a doctor that I sent him to or my
9 office did to be more accurate, Dr. Robert V. Holman, an
10 impartial specialist, United States Department of Labor.

11 THE COURT: What is that name, Dr. what?

12 THE WITNESS: Dr. Robert V. Holman. I may
13 have more, I will check my file.

14 THE COURT: Do you have the actual reports
15 there?

16 THE WITNESS: Some I have actual reports,
17 some I have copies, some I have abstracts. He saw
18 Dr. Campbell again on April 6, 1973, second time.

19 THE COURT: Of course, these are all reports
20 made after his accident in 1973, I suppose?

21 THE WITNESS: His accident of October 6, 1972.

22 THE COURT: The reports were in 1973?

23 THE WITNESS: Some in 1973.

24 THE COURT: Did you get any reports -- did
25 he come to you for an accident in June 1974?

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Lasoff-direct

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THE WITNESS: Yes, he did, your Honor.

3

THE COURT: Did you get any reports from a
doctor with respect to that?

4

THE WITNESS: Yes, I did, your Honor.

5

THE COURT: What did it say?

6

THE WITNESS: Mr. Capotorto did not injure his
back in 1974, your Honor.

7

8

THE COURT: He said his back hurt a little,
though.

9

10

THE WITNESS: I am referring to my file and
the only reason I brought this file, when I was here
this morning I heard it mentioned and I dug up this
file in the interim. The reports indicate an injury
to the right knee..

11

12

THE COURT: Whose report is this?

13

14

THE WITNESS: Dr. Edwin A. Campbell who was
the treating doctor.

15

16

THE COURT: Injury to the right knee?

17

18

THE WITNESS: And right ankle, right foot,
period.

19

20

As a matter of fact, the stevedore's report
of accident refers to injury of the right foot only.
I still have another report I have not told you about
with regard to this particular case. On September 10,

12

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Lasoff-direct

2 1973 Mr. Capotorto was examined by a doctor David --

3 THE COURT: This is 1973 and this refers to the
4 October accident, right?5 THE WITNESS: Yes. I am back to the October
6 accident and Dr. David Graubard, who is a specialist
7 in schedule losses and who Mr. Capotorto was sent to
8 for the purpose of working out a compensation settle-
9 ment. At that time Dr. Graubard found --10 MR. MADDALENA: I am going to object to what
11 Dr. Graubard found as being incompetent and not
12 necessarily established by any proper framework.13 THE COURT: Well, I do not know about it. This
14 is a report he gave you?15 THE WITNESS: This is the report that he filed
16 with the United STates Department of Labor and would
17 be an official Government document.18 MR. COYNE: Your Honor, the other reports were
19 also filed with the Department of Labor.

20 Isn't that correct?

21 THE WITNESS: Yes.

22 MR. COYNE: The other doctors' reports I would
23 like to offer those reports in evidence.24 THE COURT: How do we know they are filed with
25 the Department of Labor?

1 Lasoff-direct

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2 THE WITNESS: I think they are addressed to the
3 United States Department of Labor.

4 MR. MADDALENA: I think they are public
5 documents but there has been no proper foundation laid.

6 THE COURT: I will take a look at them. I am
7 not going to apply any highly technical approach to
8 these documents.

9 Do you want to take a look at them?

10 MR. MADDALENA: The thrust of my objection is
11 not as to the report or the fact he received a report,
12 it is to the contents of the report as being prohibitive
13 in this case.

14 THE COURT: That is the whole point. The
15 contents of the report I assume is the report of a
16 doctor with respect to the October accident and I
17 assume it says nothing about a herniated disc.

18 MR. MADDALENA: May I see them, your Honor?

19 THE COURT: That is why I asked you to look at
20 them.

21 MR. MADDALENA: No objection to Dr. Graubard's
22 report.

23 THE COURT: Let me see it.

24 You had this report at the time?

25 THE WITNESS: Yes, sir.

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1 Lasoff-direct

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2 THE CLERK: Defendant's Exhibit B, report of
3 Dr. David J. Graubard dated September 10, 1973 marked
4 in evidence.

5

6 (continued next page)

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2 MR. COYNE: You do not object to Dr. Vaccarino's
3 report?

4 MR. MADDALENA: No, sir.

5 MR. COYNE: I will offer it, if he does not
6 object.

7 MR. MADDALENA: Is that November 14th or
8 March 7th?

9 THE CLERK: It is dated November 14, 1972,
10 Defendant's Exhibit C, marked in Evidence.

11 THE COURT: You have that attached to your
12 affidavit, I believe, Mr. Maddalena, Dr. Vaccarino's
13 report?

14 MR. MADDALENA: Yes, your Honor, I believe it
15 was attached, yes.

16 MR. MADDALENA: I have no objection to Dr. Campbell,
17 if your Honor please.

18 MR. COYNE: I have two reports of Dr. Campbell
19 and one from Dr. Abramson and Mr. Maddalena says he
20 has no objection.

21 THE CLERK: Defendant's Exhibit D, two reports
22 from Dr. Campbell, January 9, 1973, and there is
23 Dr. Campbell's report of April 6, 1973, which will be
24 Exhibit E and Exhibit F is Dr. Abramson's report of
25 September 24, 1973, all marked in Evidence as Defendant's

1 Laseff-direct

2 exhibits.

3 THE WITNESS: I know it is unusual but I found
4 Dr. Holman's report. Maybe Mr. Coyne wants it.

5 MR. COYNE: He was the impartial examiner.

6 THE COURT: What do you mean by impartial?

7 MR. MADDALENA: I do not think we should have
8 a characterization of the doctor at this time.

9 THE COURT: They are all supposed to be
10 professional doctors and impartial.

11 MR. COYNE: He was the one who examined for
12 the Department of Labor, not for any of the parties.

13 THE COURT: Who did Dr. Campbell examine for?

14 THE WITNESS: For me, your Honor.

15 MR. COYNE: I will offer the report of
16 Dr. Holman.

17 MR. MADDALENA: No objection.

18 THE CLERK: Defendant's Exhibit G, report of
19 Dr. Robert Holman dated January 17, 1973, marked in
20 Evidence.

21 THE COURT: Let me ask you this, where is the
22 report of the June 14, 1974 accident?

23 THE WITNESS: Right here.

24 THE COURT: If you are going to put them in
25 evidence, put them in now.

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~~Leaseff-direct~~

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2 MR. COYNE: I was not going to put them in. We
3 were not relying on those, we were relying on these
4 reports.

5 THE COURT: I would like to see them.

6 MR. COYNE: I have no objection.

7 THE COURT: Put them in as a bunch and say
8 doctors' reports of June.

9 THE WITNESS: I would need these back because
10 this file is not closed.

11 THE CLERK: Defendant's Exhibit H, seven pages
12 of reports, June 1974, marked in Evidence.

13 THE COURT: I cannot make this one out. Are
14 they all Dr. Campbell's reports?

15 THE WITNESS: Either his or his partner
16 Dr. Guarino.

17 THE COURT: Who is Kaufman? Is that a doctor?

18 THE WITNESS: I think that is a stevedore's
19 report of accident and has nothing to do with the
20 doctors.

21 THE COURT: I had better not look at it unless
22 it is admitted in evidence with the consent of the
23 plaintiff or at least he has a chance to look at it.

24 Do you want to look at the Kaufman thing?

25 MR. MADDALENA: No objection.

4 1 Lasoff-direct

2 THE COURT: You have another witness, Mr. Coyne?

3 MR. COYNE: I have few more questions, your
4 Honor.

5 THE COURT: Ask them.

6 BY MR. COYNE:

7 Q At any time did the shipowner's representative
8 have Mr. Capotorto examined by a physician?

9 A Not according to my file.

10 THE COURT: You mean the Chilean line did not
11 have him examined?

12 MR. COYNE: Right.

13 THE COURT: It is a little unusual, isn't it?

14 THE WITNESS: May I answer that, your Honor?

15 THE COURT: Well, that is what I asked you.

16 THE WITNESS: No, your Honor, it is only in
17 cases of extreme severity where the shipowner requests
18 deposition.

19 THE COURT: As a matter of fact, you did have
20 the plaintiff's physician examination, didn't you?

21 THE WITNESS: I had the plaintiff examined
22 several times, your Honor.

23 THE COURT: As a matter of fact, Dr. Vaccarino,
24 isn't he the plaintiff's physician?

25 THE WITNESS: No, the stevedores' doctor, your

2 | Page

3 THE COURT: Did the plaintiff have a physician
4 of his own?

5 MR. MADDALENA: Dr. Vaccarino became his phy-
6 sician.

Q Dr. Campbell and Dr. Graubard were his doctors?

A Doctors I sent him to

9 Q Dr. Campbell and Dr. Graubard, he had been sent
10 to them by Mr. Lasoff's office.

THE COURT: Are those reports on any form?

Is this a Compensation program?

13 THE WITNESS: Yes, that is a 1974 case you are
14 looking at.

15 THE COURT: Did you send him to Campbell for
16 the October 1972 case?

17 THE WITNESS: At that time there had been a change
18 in the law dealing with longshoremen. Up to November
19 1972 these men were obligated to be treated by a
20 company doctor. After that date they had a right to
21 free choice of physicians and I do not recollect if I
22 sent him to Dr. Campbell or he knew Dr. Campbell from
23 previous witnesses and went there voluntarily.

24 THE COURT: Anyway, under the United States
25 Department of Labor, Bureau of Compensation. Dr. Campbell

6 1 Laseff-direct

2 was employed?

3 THE WITNESS: No, Dr.Campbell was obligated to
4 file reports with that Commission as the normal course
5 of his doing business.

6 THE COURT: In 1974?

7 THE WITNESS: In 1974 any doctor who treated
8 an injured person under the Federal Longshoreman and
9 Harbor Worker's Act must file those reports.

10 THE COURT: He really was not the plaintiff's
11 doctor then?

12 THE WITNESS: Yes, he was. This was a free
13 selection by the plaintiff, your Honor.

14 THE COURT: He chose Campbell? He could have
15 chosen somebody else?

16 THE WITNESS: He could have chosen anybody he
17 wanted to.

18 THE COURT: That doctor would have to file this
19 report?

20 THE WITNESS: Yes.

21 THE COURT: How about 1972?

22 THE WITNESS: In 1972 the companies controlled
23 the activities of these men. By law, they were
24 obligated to be treated by a company-designated
25 physician.

2

THE COURT: Was he so treated?

3

THE WITNESS: Yes, he was.

4

THE COURT: Who was it?

5

THE WITNESS: Dr. Ritzman and Dr. Talagambee
were both company physicians.

6

THE COURT: When you say company, the Chilean
line?

7

THE WITNESS: Piston stevedore.

8

THE COURT: Dr. Talagambee?

9

THE WITNESS: As was Dr. Vaccarino.

10

THE COURT: Was he the company doctor for Piston?

11

THE WITNESS: He was their orthopedic specialist
who examined the man on their behalf.

12

THE COURT: So strictly speaking he never did
go around and pick up a doctor of his own choice to
whom he had gone before. You recommended Campbell,
didn't you?

13

THE WITNESS: Yes, I did, your Honor.

14

THE COURT: How about these other doctors, Holman,
et cetera.

15

THE WITNESS: Holman is by title an impartial
orthopedic specialist of the United States Department
of Labor, that is his title.

16

THE COURT: How did you get there?

1 THE WITNESS: He was sent there because the
2 Compensation carrier refused to pay him compensation
3 and he was examined by Dr. Holman, who held he be paid
4 compensation.
5

6 Q Mr. Lasoff, at the time that Mr. Capotorto was
7 in your office on December 24, 1974, did he tell you that the
8 effect of this accident he had in October 1972 made it diffi-
9 cult for him to understand what you were talking about?

10 MR. MADDALENA: I am going to object to the
11 form of the question, your Honor, too leading.

12 Q What if anything did he say with respect to the
13 effects of the injury of 1972 having any bearing on his ability
14 to understand what you were saying to him?

15 THE COURT: It is a strange question.

16 THE WITNESS: He complained to me of pain in his
17 back.

18 THE COURT: You are talking about the injury of
19 1972?

20 MR. COYNE: Yes, your Honor.

21 Q At the time he signed the release on December 24,
22 1974, did he say that he was under any economic strain of
23 any type?

24 A We did not discuss it and I do not see any
25 reason why it would come up at the time.

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Lasoff-direct

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Q He had been working for quite a while before he came in?

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A Well, let us wait a minute. Mr. Capotorto as I recollect it had had another accident in June of 1974. I can check the file. He lost about three months from work in that accident.

8

9

Q Was he working at the time he came in to see you in December?

10

11

A I really did not ask him. I assume he was, I did not ask him.

12

13

THE COURT: I think he testified he was working in October 1974.

14

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Q I have one other question. Based on your experience and based on the information that you had with respect the accident and the medical reports that you had available to you on December 24, 1974, were you of the opinion that this was a fair and reasonable settlement?

19

20

A I would not have sent Mr. Capotorto unless I was of that opinion.

21

THE COURT: Just say yes or no.

22

THE WITNESS: Yes.

23

MR. COYNE: I have no other questions.

24

THE COURT: Let me ask you this, Mr. Lasoff.

25

Mr. Capotorto says when he signed this release on

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Inoff-direct

2 December 24, you were having a big Christmas Eve party
3 in your office and you only spent five minutes with him
4 and I got the impression and I could be wrong, that in
5 effect he was saying you did not give it much atten-
6 tion, you were more concerned with the Christmas Eve
7 party than you were to the details of his settlement?

8 THE WITNESS: Your Honor, the party that he
9 was referring to commenced at 12 noon on the 24th and
10 it was over by 2 p.m. We had sandwiches sent in from
11 the delicatessen and I believe we might have had a
12 couple of bottles of champagne.

13 THE COURT: You did this every Christmas Eve?

14 THE WITNESS: We do it on the occasions when we
15 cannot get a restaurant which satisfied the needs of
16 all our members.

17 THE COURT: What time did he come in?

18 THE WITNESS: He came in I would say, definitely
19 came in when the party was in progress after 12 and
20 before 2, because we close the office at 2.

21 THE COURT: You do not know whether he came
22 before 12?

23 THE WITNESS: I do know that because he would not
24 know anything about the Christmas party before then.

25 THE COURT: So he came while the party was going

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Lacoff-direct

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2 on?

3 THE WITNESS: That is right.

4 THE COURT: Is it true that you did not have
5 too much time for him?

6 THE WITNESS: No, your Honor.

7 THE COURT: He said five minutes.

8 THE WITNESS: Five minutes is a lot of time when
9 you are dealing with the same client over and over
10 again. I explained to him what I had to explain to
11 him. He asked me a couple of questions and signed the
12 papers. There was no, you know, involved transaction
13 going on. He knew what he came in for, what he was
14 seeing me about, a possible settlement. The letter
15 specifically states that.

16 THE COURT: A telegram?

17 THE WITNESS: No, it is a letter.

18 THE COURT: You say it is five minutes you spent
19 with him?20 THE WITNESS: It is quite possible. That is as
21 long as I spend on any of these things, your Honor,
22 unless I have an argument.23 THE COURT: I am not talking about that, I am
24 talking about him.

25 THE WITNESS: I have no specific recollection but

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Lasoff-direct

2 I would not quarrel with five minutes.

3 THE COURT: Start your cross-examination.

4 MR. MADDALENA: Yes, your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. MADDALENA:

7 Q Mr. Lasoff, it is part of a lawyer's function
8 to recommend whether or not a case be settled at a price or
9 not, is it not?

10 A Definitely.

11 Q Did you recommend that Mr. Capotorto accept the
12 settlement?

13 A Yes.

14 Q I believe you testified earlier that when
15 Mr. Capotorto came to your office on December 24th he was
16 complaining of continued back pain?

17 A He said, "My back still hurts me," to be exact.

18 THE COURT: Let me ask you one question. I am
19 sorry, do you mind if I interrupt you?

20 MR. MADDALENA: Not at all, sir.

21 Q Was any mention made to you, verbally or rather
22 orally by any doctor that he might have had a herniated disc?

23 THE WITNESS: No, sir.

24 THE COURT: Did it occur to you that he might
25 have had a herniated disc?

2 THE WITNESS: Not from my complete file which
3 had copies of each and every doctor.

4 THE COURT: The answer is no?

5 THE WITNESS: No, no way, your Honor.

6 THE COURT: He says he's recommended that the
7 plaintiff accept the settlement.

8 Q Did you recommend he accept the settlement?

9 A Yes.

10 Q And on occasions previously had you not recom-
11 mended that Mr. Capotorto see a doctor for evaluation as far
12 as his injuries were concerned?

13 THE WITNESS: I had sent Mr. Capotorto on two
14 occasions to Dr. Campbell. On those times the company
15 doctors had discharged Mr. Capotorto and said he was
16 able to work and Mr. Capotorto advised me he was not
17 able to work. Therefore I sent him to a doctor for
18 an evaluation. I also sent him to Dr. Graubard in
19 1973 for the purpose of determining whether or not he
20 had a permanent schedule loss of his leg and he was
21 eventually awarded a permanent schedule loss of his
22 leg.

Q My point is this, Mr. Lasoff --

24 THE COURT: Let me ask you, what you mean by
25 permanent schedule loss of his leg. Did he get any

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Lasoff-cross

2 more than the \$3,000?

3 THE WITNESS: No, that is part of the \$3,000
4 compensation, your Honor. I will tell you the exact
5 figure if you will bear with me for one moment. I
6 think my doctor said he had a one-seventeenth-and-a-
7 half percent loss of the leg and I believe my recollec-
8 tion is he was paid eight and a half percent or 10
9 percent of the leg. You do adjust these things when
10 you settle them.

11 THE COURT: All right, next.

12 Q I believe you said earlier that it was your
13 feeling that inasmuch as he had not seen the doctor in 18
14 months that he had better accept the offer?

15 A No. My feeling and my explanation was nobody is
16 ever happy with a settlement, either way, no matter what the
17 amount is. I explained to him if we were going to go to court
18 to try this case and I would bring him in there to testify,
19 he still has pain in his back and he has not seen a doctor
20 for his back since I believe March of 1972, that it would not
21 be believed by a jury and that therefore I would recommend
22 that he settle the case.

23 Q Did it not occur to you, Mr. Lasoff, that he
24 see a doctor therefore?

25 A I had already sent him to several doctors, none

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2 of whom gave me any indication of any injury which would
3 require the seeing of another doctor.

4 Q Did you keep a record, Mr. Lasoff, of all your
5 conversations with the plaintiff during the interval of those
6 18 months?

7 A No, sir, I did not. However, I am known to have
8 a fairly good memory.

9 Q And during those 18 months did you ever contact
10 Mr. Capotorto to inquire as to his back condition?

11 A No.

12 Q Had you made inquiry and had he told you that
13 he was indeed having further back pain, would you not have
14 considered it professional to suggest to him he see another
15 doctor?

16 A If I felt he needed another doctor I would have
17 sent him to another doctor.

18 Q In other words, you have not spoken to this man
19 for 18 months?

20 A Not so.

21 Q You have spoken to him during those 18 months
22 and had he made complaints of pain during those 18 months?

23 A What he did ask me when he called me, "When is
24 my case going to be settled?"

25 Q In other words, it is your testimony he made

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Lasoff-cross

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2 complaint of back pain on December 24, 1974, but that for
3 the 18 months prior to December 24, 1974, he never made one
4 complaint to you of back pain?

5 A I did not say that at all.

6 Q I am asking you that, Mr. Lasoff, during those
7 18 months did he make any --

8 A Well, you know --

9 Q Let me finish my question. During those 18
10 months, Mr. Lasoff, during the many conversations you had with
11 Mr. Capotorto --

12 A They were not many conversations.

13 Q Did he make complaints of back pain?

14 A First of all, they were not many conversations.

15 Q How many were there, Mr. Lasoff?

16 A Until the time that he returned to work he
17 would call me whenever he was discharged by a company doctor.

18 (Continued on next page.)

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Lasoff-cross

Q How many was that, Mr. Lasoff?

A At least three times, maybe more.

Q During those three times, Mr. Lasoff, did he tell you he was having any pain in his back?

A Yes he did, that is why I sent him to a doctor.

Q Did you not just testify, Mr. Lasoff, that he had not seen a doctor for 18 months?

A I am referring to the period of time he was out of work which is more than 18 months.

Q I am referring to the period you spoke to him during the 18 months that he did not see a doctor, Mr. Lasoff.

A I spoke to him in that 18 month period maybe two or maybe three times and the only question was, "When is my case going to be settled?"

Q Did you ever think to ask your client how are you feeling Mr. Capotorto?

MR. COYNE: Objection to the question.

THE COURT: Let me ask you this question. You said he never went to a doctor in 18 months. You have an accident on June 14, 1974. Is that right? Didn't he go to a doctor between? After that accident we have some doctors reports as to that accident so he did go to a doctor.

THE WITNESS: I was referring to the back.

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Lasoff-cross

2 THE COURT: He did go to a doctor.

3 THE WITNESS: He did go to a doctor but there
4 is no complaint in the doctor's files as to the back
5 either.6 THE COURT: He went to a doctor. When did this
7 settlemen actually crystallize?8 THE WITNESS: From papers in my file, your Honor,
9 I can tell you fairly specifically that I received a
10 notice from the United States District Court for the
11 Southern District of New York advising me this case
12 was on for a pre-trial hearing before Judge Frankel
13 on November 20, 1974 and we wrote a letter to Burns
14 and LaMorte. It would be between somewhere November 1
15 and November 20.

16 THE COURT: Who are they?

17 THE WITNESS: They are the claims representative
18 for the Chilean Line in New York City. They are not an
19 insurance company, they are claims adjusters.20 THE COURT: On December 24 you had the release
21 ready, is that right?

22 THE WITNESS: Yes.

23 THE COURT: The figure was reached about that
24 time, was it?

25 THE WITNESS: Yes, between November 1 and

3 1 Lasoff-cross

2 December 24th. Between this point Mr. Billyer had to
3 write overseas for that approval.

4 THE COURT: Between that time did you ask plaintiff
5 whether the figure was agreeable to him?

6 THE WITNESS: No I had no figure at that time.

7 THE COURT: You must have told him the \$16,000
8 odd was okay, that is to Mr. Billyer.

9 THE WITNESS: I told him in my experience it
10 would be okay.

11 THE COURT: You had not told the plaintiff
12 anything about that?

13 THE WITNESS: No, sir.

14 THE COURT: When did you get a reply from overseas
15 from Mr. Billyer that the \$16,000 was okay?

16 THE WITNESS: The first time I got such response
17 was when releases were mailed to me at which time I
18 sent for the plaintiff.

19 THE COURT: When were the releases mailed to you?

20 THE WITNESS: I would say they were received on
21 the 18th, your Honor.

22 THE COURT: Of what?

23 THE WITNESS: Of December.

24 THE COURT: You had a settlement conference with
25 Judge Frankel? When you went there did you say the case

4 1 Lasoff-cross

2 was settled?

3 THE WITNESS: No, we asked for 30 days to complete
4 the settlement.

5 THE COURT: You said it was settled, you thought
6 it would be settled.

7 THE WITNESS: I said that I thought the figure
8 we were discussing was reasonable and --

9 THE COURT: And that was around \$16,000?

10 THE WITNESS: Exactly the figure that the release
11 states.

12 THE COURT: At that time you did not tell the
13 plaintiff about that figure, did you?

14 THE WITNESS: No, it was a figure that meant
15 nothing if the ship owner or insurance company rejected
16 the figure.

17 THE COURT: I know it meant nothing. If the
18 plaintiff said no you would save a lot of trouble and
19 not go what you went through.

20 THE WITNESS: Yes, sir, but he did not say no
21 even later.

22 THE COURT: He did not say no because you did
23 not ask him.

24 THE WITNESS: I mean he signed the release.

25 THE COURT: He signed the release in December.

2

I am talking about November.

3

THE WITNESS: Well I do not believe he would have said no. If he said that he would not have signed the release in December.

6

THE COURT: You would have saved a lot of trouble.

7

THE WITNESS: That is very true, your Honor.

8

THE COURT: This is all really tangential to the issues involved. It may be interesting but I do not know that it is going to be pertinent.

11

BY MR. MADDALENA:

12

Q Did there come a time you sent the release to the company?

14

A Yes.

15

Q When was that?

16

THE COURT: To the company -- he already got them.

18

THE WITNESS: Signed releases.

19

THE COURT: You got them around December 18.

20

THE WITNESS: I got them December 18 and they were mailed to the LaMorte Burns Company on December 24, 1974.

23

Q The very day Mr. Capotorto executed the release, on that self same day you mailed those releases to the company?

25

A Yes, sir.

6 1 Lasoff-cross/Maddalena

2 Q And did you ever get an acknowledgement from
3 the company that they had received those releases?

4 A What do you mean by acknowledgement?

5 Q Did they ever call you up and say they received
6 your releases or sent an acknowledgement in the mail?

7 A No.

8 Q What was the next thing you heard from the
9 company?

10 A They eventually sent me a check.

11 Q When did you receive a check?

12 A I have no idea.

13 MR. MADDALENA: I call for the production of
14 Plaintiff's Exhibit 3.

15 Q Is it your testimony Mr. Lasoff that you do not
16 remember when you received the check from LaMorte Burns?

17 A Yes.

18 THE COURT: You said you had such a good memory
19 before.

20 THE WITNESS: I have no particular reason, your
21 Honor, to remember one check. I receive at least 20
22 or 30 checks a week and one check from another does not
23 mean anything to me.

24 THE COURT: You mean in settlements you do a
25 big business?

7 1 Lasoff-cross/Maddalena

2 THE WITNESS: I would say so, your Honor. I
3 mentioned before when you asked me or they asked me my
4 experience I said I had between five and ten thousand
5 cases. We are fairly busy.

6 THE COURT: You represent a union?

7 THE WITNESS: No, your Honor, just the man
8 individually.

9 Q I show you Plaintiff's Exhibit 3 in evidence
10 and ask you if this is a true copy of the check in settlement
11 in the matter of Giuseppe Capotorto's accident of October 6,
12 1972?

13 A I assume it is.

14 Q Don't you know?

15 THE COURT: Look at it. You have to look at it.

16 THE WITNESS: It looks like the check.

17 Q And do you notice the date in the upper right
18 hand corner?

19 A January 22nd, 1975. Is that what you are
20 referring to?

21 Q Yes.

22 A Yes.

23 Q Does that refresh your recollection as to when
24 this check arrived in your office?

25 A I would assume it arrived somewhere around

1
2 January 22nd, 1975.

3 Q And did there come a time when this check was
4 deposited in an account of Zimmerman and Zimmerman?

5 A I think so.

6 THE COURT: Show him the signature. Show him
7 the endorsement on the back.

8 MR. MADDALENA: May I proceed? I subpoenaed his
9 deposit slip for this item and I am going to call for
10 its production now.

11 THE WITNESS: I do not keep deposit slips. I
12 throw them away. You will not find it too readily.

13 THE COURT: Look at the check again.

14 MR. COYNE: Your Honor what happened after the
15 release was executed I do not think has anything to do
16 with it.

17 THE COURT: Maybe it doesn't.

18 THE WITNESS: I do not understand what it has
19 to do with it.

20 THE COURT: Now wait a minute, it does have
21 something to do with it. You see the name Guiseppe
22 Capotorto on there?

23 THE WITNESS: Yes.

24 THE COURT: Who endorsed that?

25 THE WITNESS: Guiseppe Capotorto never endorsed

9 1

Lasoff-cross/Maddalena

2 this check that I know of, your Honor. I did not see
3 him sign it.

4 THE COURT: Who did sign it?

5 THE WITNESS: I do not know but it is not his
6 signature.

7 THE COURT: Your firm deposited it, didn't it?

8 THE WITNESS: Yes it did.

9 THE COURT: What right had they to put Giuseppe
10 Capotorto's endorsement on that check?

11 THE WITNESS: I do not know they did, your Honor.

12 THE COURT: How did you get it deposited?

13 THE WITNESS: At this time, your Honor, our
14 account was changed twice within the month of January,
15 February and March 1975 because a great many checks
16 had been stolen and I have a claim presently pending
17 against Bankers Trust Company for checks that were
18 cashed with fraudulent signatures. This is not Mr.
19 Capotorto's signature.

20 THE COURT: How about Zimmerman and Zimmerman?

21 THE WITNESS: That is not their signature either,
22 your Honor.

23 THE COURT: You think this is one of the stolen
24 checks?

25 THE WITNESS: I think so. That is not the

10 1.

Lasoff-cross/Maddalena

2 Zimmerman and Zimmerman signature. Zimmerman and
3 Zimmerman has a stamp when it endorses a check, your
4 Honor.

5 THE COURT: Someone stole that check. Nevertheless
6 you returned the amount that Mr. Capotorto was to
7 receive on that settlement to wit \$6,750 roughly speaking
8 by your own check.

9 THE WITNESS: No, I returned the entire amount,
10 your Honor, \$12,500 because we would fight this out
11 ourselves. Mort Burns was not responsible for any
12 mistakes made and one way or another we would get our
13 money back.

14 THE COURT: So you returned it.

15 THE WITNESS: We returned it ourselves.

16 THE COURT: They have the money.

17 THE WITNESS: Yes they do.

18 THE COURT: So the settlement is all off.

19 THE WITNESS: Well, at least as far as I'm
20 concerned I never got paid. Mr. Capotorto never got
21 paid. The only one who got paid back was LaMorte Burns
22 and Company.

23 THE COURT: LaMorte Burns claim they have a
24 release here.

25 THE WITNESS: They do.

11 1 Lasoff-cross/Maddalena

2 THE COURT: In fact they have not paid any
3 consideration for it.

4 MR. COYNE: As I said to your Honor and I have
5 said numerous time and I've said before this Court when
6 the case was first referred to us, we would be glad to
7 give him \$12,500 but his lawyer is not willing to take it.

8 THE COURT: The whole \$12,500, I think that
9 would be acceptable.

10 THE WITNESS: I have not waived my claim to a
11 fee here, your Honor, yet.

12 THE COURT: Do you have anything further?

13 MR. MADDALENA: No, sir.

14 THE COURT: That was a stolen check. All it
15 shows is that Mr. Capotorto did not accept the funds
16 for which he gave the release, that is all it shows.
17 It does not show necessarily he does not have to accept it.

18 MR. MADDALENA: That is the purpose of the
19 lawsuit, your Honor.

20 THE COURT: I understand that. I think I
21 understand it at this late date.

22 Are there any further questions?

23 MR. MADDALENA: No, your Honor.

24 THE COURT: Any further questions?

25 MR. COYNE: No, sir.

1 THE COURT: Thank you very much. 146

2 MR. MADDALENA: I have no other witness.

3 THE COURT: Do you have any more witnesses?

4 MR. COYNE: Yes, I would like to call Mr. Billyer
5 who negotiated the settlement.

6 MR. MADDALENA: Your Honor, I will concede for
7 the purposes of calling Mr. Billyer, there is no issue
8 here, your Honor.

9 THE COURT: What would he testify to if called?
10 Mr. Billyer, what would you testify to if you were
11 called?

12 MR. BILLYER: My dealings with Mr. Lasoff and
13 what basis I evaluated the case as \$12,500.

14 THE COURT: Well, get on the stand, I want to
15 ask a few questions.

16 W A Y N E S B I L L Y E R , having been first duly
17 sworn by the Clerk of the Court, took the witness
18 stand and testified as follows:

19 THE COURT: Can I ask him some questions?

20 MR. COYNE: Yes.

21 THE COURT: Who do you work for?

22 THE WITNESS: LaMorte Burns.

23 THE COURT: They are claim agents for the
24 Chilean Line?

25 THE WITNESS: Yes, sir.

1 Billyer

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2 THE COURT: You evaluated the settlement of this
3 claim against the plaintiff Capotorto?

4 THE WITNESS: Yes, sir.

5 THE COURT: What was the basis of your evaluation?

6 THE WITNESS: Our investigation.

7 THE COURT: What was your investigation?

8 THE WITNESS: Interviews with longshoremen in
9 order to determine whether or not Mr. Capotorto was
10 injured in the manner which was alleged by his attorney
11 and my review of the medical record which I obtained
12 from the Department of Labor.

13 THE COURT: What were those medical records?

14 THE WITNESS: The records from Dr. Vaccarino,
15 Dr. Campbell, Dr. Holman, Seth Abramson, all the records
16 which have been introduced.

17 THE COURT: Introduced in evidence?

18 THE WITNESS: Yes.

19 THE COURT: You saw those two, right?

20 THE WITNESS: Yes.

21 THE COURT: Did you talk to any of these doctors
22 at any time?

23 THE WITNESS: No.

24 THE COURT: All you did was look at papers, is
25 that right?

1 Billyer

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2 THE WITNESS: Correct.

3 THE COURT: And you talked to the plaintiff at
4 any time, did you?

5 THE WITNESS: No, just his attorney, Mr. Lasoff.

6 THE COURT: Do you have anything further?

7 MR. COYNE: I do not think so, that really sums
8 it up.

9 MR. MADDALENA: One question, if I may.

10 CROSS-EXAMINATION

11 BY MR. MADDALENA:

12 Q Mr. Billyer, did you reserve this case and by
13 that I mean you set aside an amount of money as to how much
14 this claim would cost you ultimately?15 A You are referring to all expenses including
16 investigation?

17 Q No, for settlement purposes.

18 MR. COYNE: I will object to that.

19 THE COURT: I do not know what that has to do
20 with it.21 MR. MADDALENA: The gentleman has been produced
22 to demonstrate he evaluated the claim and he included
23 amongst his evaluations the fact he investigated it.
24 I want to determine how he reserved this case based on
25 thos investigations. The thrust of my inquiry is that

2 there would be one reserved for a sprained back and
3 other reserved for a herniated disc.

4 THE COURT: Did you reserve for a herniated disc?

5 THE WITNESS: No, I did not.

6 MR. MADDALENA: No further questions.

7 THE COURT: Thank you very much.

8 Anything else?

9 MR. MADDALENA: No, your Honor.

10 THE COURT: Anything else, Mr. Coyne? Were you
11 going to put on Mr. DeCostanzo?

12 MR. COYNE: Well I would like to offer in evidence
13 his earning records for Mr. Capotorto and if Mr.
14 Maddalena would consent to that then I will not have to
15 put on Mr. DeCostanzo.

16 THE COURT: I do not know what relevance that
17 has. We are not talking about the fairness of the
18 settlement and we are getting way off line.

19 What are we talking about here? We are talking
20 about whether or not that man made a mistaken when he
21 signed the release. Whether he signed it under the
22 misunderstanding that he could bring another suit for
23 his continuous back pains and whether at the time he
24 signed it he thought and was told he only had a sprained
25 back when in actuality he had a herniated disc and

2 THE CLERK: Civil cause on trial, Capotorto,
3 et cetera.

4 THE COURT: Well, gentlemen, I can dictate
5 to you my decision in this case.

6 This is an action for declaratory judgment
7 under 28 USC Section 2201 to set aside a general
8 release executed by the Plaintiff, Guiseppe
9 Capotorto, releasing the defendant Compania Sud
10 Americana De Vapores, Chilean Line, Inc. from all
11 claims for injury to the plaintiff arising out of
12 an accident occurring on October 9, 1972 on the
13 S.S. Imperial, owned by the Chilean Line, Inc.

14 The plaintiff claims that at the time of
15 his accident in October 9th, 1972 he suffered a
16 herniated disc which was diagnosed by his doctors,
17 the doctors for the stevedoring company and the
18 compensation doctors, in November 1972 as a lumbar-
19 sacral sprain.

20 He was advised by the doctors that he could
21 return to work and he did return to work.

22 On June 14, 1974 the plaintiff incurred/injuried
23 another
24 by reason of an accident occurring on Pier Five
25 when working in a ship's hatch. He fell some four
feet and injured his knee and right ankle and could

1 not return to work until October of 1974.
2

3 All the doctors who diagnosed his case
4 reported that the injury was to the leg and ankle,
5 though plaintiff claims he also hurt his back
6 at the same time.

7 On December 24th, 1974 plaintiff, after
8 notification by his attorney, one Martin Lazoff of
9 Zimmerman & Zimmerman, Brooklyn, New York, appeared
10 in Lazoff's office for the purpose of settling
11 the case, and he was informed that the case
12 could be settled for the gross amount of \$16,182.57,
13 with the plaintiff receiving net after payment of
14 attorney's fees and the compensation liens of
15 \$3,682.57 the sum of \$6,750.

16 At the time he signed the release plaintiff
17 told his attorney that he was still suffering from
18 pain in his back and Martin Lazoff replied,
19 according to Martin Lazoff's testimony, that each
20 pain in his back could be a separate claim under
21 the Federal Compensation Law and stating, however,
22 that signing the release would end the case and
23 the plaintiff could not bring any further suits
24 against the defendant.

25 This is not exactly the plaintiff's testimony.

who is a person of limited education and has difficulty in understanding English, and in fact cannot read or write English.

On January 10, 1975 plaintiff visited Dr. Frank P. Vaccarino in connection with pains in his back. Dr. Vaccarino had examined the plaintiff in November of 1972 and he found plaintiff suffered only from a lumbarsacral sprain, confirming the diagnosis of all the other doctors.

Dr. Vaccarino placed plaintiff in the Holy Family Hospital in Brooklyn from January 14th to February 7, 1975 and this time diagnosed his case as a herniated disc, after having received a report from the clinic of a similar diagnosis, caused by the accident of October 1972 and exasperated by the accident of June, 1974, though on examination he stated that the herniated disk, while pathologically related to the accident of October 1972 was not alone caused by the accident of October of 1972.

Plaintiff testified as to his two accidents and to the effect that he is required to wear a corset and has been so required since October 1972 accident, and that in fact he hurt his knee and

1 leg in June 1974 and also had some pains in his
2 back.

3 He admitted that he had signed the release
4 at Martin Lazoff's office and stated that Martin
5 Lazoff told him at the time that he could bring
6 further court suits for any additional pains in
7 the back.

8 The Court finds that while the plaintiff could
9 not read or write English, he could understand suf-
10 ficient English in order to comprehend generally
11 what Lazoff told him. ,

12 He knew he was signing a release, that
13 much is clear.

14 CONCLUSIONS

15 The Court concludes that the diagnosis by
16 Dr. Vaccarino in the beginning of 1975 of a herniated
17 disc caused by the 1972 accident and exacerbated
18 by the 1974 accident is not plausible and is not
19 accepted by the Court for the reason that after
20 the October 1972 accident, Dr. Vaccarino diagnosed
21 the injury only as a lumbarsacral sprain.

22 Moreover, since all the other doctors
23 stated the plaintiff only suffered a knee and ankle
24 injury in the 1974 accident, that it is very

1 difficult to see how the June 14th, 1974 accident
2 could exacerbate or create a herniated disc con-
3 dition not theretofore diagnosed. It is to be
4 noted that at the trial no X-rays were offered
5 or produced, nor was a myelogram performed on the
6 plaintiff.

7 At the time plaintiff signed the release
8 there was no evidence that he had a herniated disc or
9 that he thought he had a herniated disc, and
10 therefore he could not have been misled in signing
11 this release on the ground that he was releasing
12 only injuries arising from a lumbarsacral sprain
13 and not injuries arising from a herniated disc.

14 If there were any mistake on the part of
15 the plaintiff, defendant could not be charged with
16 the mistake at the time the release was signed and
17 consequently the mistake was unilateral and not
18 mutual.

19 Such a unilater mistake is no ground for a
20 recission. See, 1 Warren's Negligence, Section
21 2.03 (1965); 3 L. Frumer, Personal Injury §4.01[2][a]
22 at 397 (1957); 13 Williston on Contracts §1551
23 (3d Edition 1970).

24 It is possible that the plaintiff may have
25

1 a cause of action of some type arising against his
2 former attorney, Martin Lazoff, for a breach of
3 trust or a misrepresentation as to a subsequent
4 law suit for back pains arising out of failure to
5 completely explain the matter during Lazoff's
6 five-minute assembly line approach in advising
7 plaintiff as to the execution of the release,
8 but this issue is not before the Court, who makes
9 no findings whatsoever with respect thereto.
10

11 The Court finds no fraud or misrepresentation
12 on the part of the defendant at the time of the
13 execution of the release or any other time.
14

15 Accordingly, the release is declared in
16 all respects valid and the complaint is dismissed.
17 The above is the Court's findings of fact and
18 conclusions of law. So ordered.
19

20 Very well, that's it.
21

22 Yes, do you have anything to say?
23

24 MR. COYNE: No, your Honor, except it doesn't
25 pertain to this case, but I still want to pay the
\$12,500. Maybe we can come to an agreement on it.
26

27 MR. MADDALENA: I will have to take that
28 under advisement.
29

30 THE COURT: He only got \$6,000 out of it and
31

WARREN'S NEGLIGENCE - VOL. I.

§ 2.03 Defenses. Next, reference is made to some of the more important defenses that may be interposed in connection with actions of this character. This is particularly true with regard to the one defense that is so frequently asserted, contributory negligence. The rules with regard to this are generally stated in an early portion of the work.³ Thereafter in the discussion of the many and varying situations claimed to constitute negligence that may arise, what has been claimed or held to be contributory negligence is considered. It has been felt that it will be of more value to the attorney to take up what has been charged to be contributory negligence under a given situation where those particular circumstances are being considered rather than to discuss the subject of contributory negligence as a whole in one place.

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DEFENDANT'S EXHIBIT A.

BASCILAY 7-1350

MEMO LETTER
OFFICE OF
ZIMMERMAN & ZIMMERMAN, ATTYS
160 BROADWAY, NEW YORK, N.Y. 10038

FILE NO. 12739

TO MR. GIUSEPPE CAPOTORTO

1357 64th Street

Brooklyn, N.Y. 11219

DATE 12 18 74

MESSAGE:
RE: Capotorto v. Companhia Sud Americana - Accident: October 6, 1972

Dear Mr. Capotorto:

Please telephone me as soon as you receivethis letter, in order to arrange an appointment for you to come in to the office to see me with reference to the possible settlement of your case.

Thank you.

MARTIN LASSOFF

8

PLAINTIFF'S EXHIBIT 2.

To all to whom these Presents shall come or may Concern,

Greeting: KNOW YE. That I, GIUSEPPE CAPOTORTO, being over the age of twenty-one (21) years and residing at 1357 64th Street, in the Borough of Brooklyn, City and State of New York,

for and in consideration of the sum of SIXTEEN THOUSAND ONE HUNDRED EIGHTY-TWO AND 57/100 inclusive of the compensation lien of \$3632.57 or a net settlement of \$12,500. dollars (\$ 16,182.57) lawful money of the United States of America to me in hand paid by

COMPANIA SUD-AMERICANA DE VAPORES, CHILEAN LINE INC.

the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents do for myself and my heirs, executors, and administrators and assigns, remise, release and forever discharge the said COMPANIA SUD-AMERICANA DE VAPORES, CHILEAN LINE INC., the vessel "IMPERIAL" its owners, operators, charterers, agents, master, officers and crew, their heirs, executors, administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against the aforesaid parties, I

ever had, now have or which my heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release includes in particular, but not in limitation of the foregoing general terms, any and all damages resulting from injuries and/or illnesses sustained, aggravated and/or otherwise suffered by me while a shoreworker aboard the vessel "IMPERIAL" and in particular, those damages resulting from the accident or any other occurrence that happened to me on or about October 6, 1972, for which I have made claim through my attorneys.

This release may not be changed orally.

In Witness Whereof, I have hereunto set my hand and seal
the 24 day of December 19 74
Sealed and delivered in the presence of

Giuseppe Capotorto L.S.
Giuseppe Capotorto

Sate of NEW YORK County of NEW YORK
On the 24 day of December 19 74 before me personally came
GIUSEPPE CAPOTORTO

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same

Notary Public, State of New York
No. 31-00000
Qualified in New York City
Commission Expires March 30, 1975

Kay Deed

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PLAINTIFF'S EXHIBIT 3.

Giuseppe Capotto
James J. Gagliardi

140 \$1.103 .40

Services of three (3) copies of
the within ~~appendix~~ is
hereby admitted this **23** day
of **April**, 1977

Attoiney for

COPY RECEIVED

APR 23 1976

KIRLIN, CAMPBELL & KEATING